**IN THE SUPREME COURT**
**APPEAL FROM THE COURT OF APPEALS**
**JUDGES: RICHARD ALLEN GRIFFIN, MARK J. CAVANAGH AND KAREN FORT HOOD**

FORD MOTOR COMPANY,

Petitioner-Appellant,

v

BRUCE TOWNSHIP,

Respondent-Appellee.
_____/

Supreme Court No. 127424

Court of Appeals No. 246579

Michigan Tax Tribunal No. 288822

FORD MOTOR COMPANY,

Petitioner-Appellant,

v

CITY OF WOODHAVEN and COUNTY OF WAYNE,

Respondents-Appellees.
_____/

Supreme Court No. 127422

Court of Appeals No. 246378

Michigan Tax Tribunal No. 294958

FORD MOTOR COMPANY,

Petitioner-Appellant,

v

CITY OF STERLING HEIGHTS,

Respondent-Appellee.
_____/

Supreme Court No. 127423

Court of Appeals No. 246379

Michigan Tax Tribunal No. 294924

# BRIEF ON APPEAL – APPELLANT

**ORAL ARGUMENT REQUESTED**

John D. Pirich (P23204)
Jeffrey A. Hyman (P33490)
Michael B. Shapiro (P20282)
Daniel L. Stanley (P57052)
HONIGMAN MILLER
SCHWARTZ AND COHN LLP
Attorneys for Petitioner-Appellant
222 North Washington Square
Suite 400
Lansing, MI 48933
(517) 377-0712
(313) 465-7422

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## STATEMENT OF BASIS OF JURISDICTION

On October 19, 2005, this Court entered its Order granting the November 16, 2004 Application for Leave to Appeal which Appellant Ford Motor Company had filed pursuant to MCR 7.302, in order to appeal the three October 5, 2004 opinions of the Michigan Court of Appeals.

## STATEMENT OF QUESTIONS INVOLVED

I. Did the majority opinion of the Court of Appeals and the Michigan Tax Tribunal ("MTT") commit error of law and/or adopt wrong legal principles in holding below that an assessment and payment of excessive personal property taxes, originating out of a taxpayer's error in preparing a personal property statement filed with and relied on by a taxing jurisdiction, does not constitute a "mutual mistake of fact" within the meaning of section 53a of the General Property Tax Act ("GPTA")?

Appellant says "yes."

The Court of Appeals minority opinion says "yes."

Appellees say "no."

The Court of Appeals majority opinion says "no."

The MTT says "no."

II. Did the majority opinion of the Court of Appeals and the MTT commit error of law and/or adopt wrong legal principles in **not** applying this Court's definition of "mutual mistake of fact" in Consumers Power Co v Muskegon Co, 346 Mich 243; 78 NW2d 223 (1956), when the Legislature intended that definition to apply for purposes of section 53a of the GPTA, which was enacted two years after and in response to this Court's decision in Consumers Power?

Appellant says "yes."

The Court of Appeals minority opinion says "yes."

Appellees say "no."

The Court of Appeals majority opinion says "no."

The MTT did not address this issue below.

III. Did the majority opinion of the Court of Appeals and the MTT commit error of law and/or adopt wrong legal principles in defining "mutual mistake of fact," not in accordance with the term's well established plain, ordinary and clear meaning, but rather by engrafting a direct causation requirement not found in the language of section 53a of the GPTA, and then applying that purported requirement in a convoluted and irrational manner?

Appellant says "yes."

The Court of Appeals minority opinion says "yes."

Appellees say "no."

The Court of Appeals majority opinion says "no."

The MTT says "no."

IV. Did the majority opinion of the Court of Appeals and the MTT commit error of law and/or adopt wrong legal principles in interpreting "mutual mistake of fact" in a manner that prevents section 53a of the GPTA from applying to personal property, when the Legislature clearly intended the provision to apply to all types of property?

Appellant says "yes."

The Court of Appeals minority opinion says "yes."

Appellees have not addressed this issue.

The majority opinion of the Court of Appeals did not address this issue below.

The MTT did not address this issue below.

V. Did the majority opinion of the Court of Appeals and the MTT commit error of law and/or adopt wrong legal principles in denying Appellant Ford Motor Company's ("Ford's") motion to amend its MTT petition filed in the case involving Appellee Bruce Township when this Court has held that amendment of pleadings is a matter of right unless there is a particularized reason for denying the motion to amend?

Appellant says "yes."

The Court of Appeals minority opinion says "yes."

Appellee Bruce Township has not addressed this issue.

The Court of Appeals majority opinion says "no."

The MTT says "no."

## I. INTRODUCTION

In the typical challenge of a property tax assessment for the relevant tax year involved, the taxpayer protests the assessment to the board of review of the local taxing jurisdiction in March of the year involved. MCL 205.735(1). If relief is not obtained there, the taxpayer then appeals the assessment by filing a petition with the Michigan Tax Tribunal (the "MTT") by June 30 of the year involved. MCL 205.735(2).

Prior to the relevant tax years involved in these cases, there was a time when the Michigan courts held that similar stringent limitations periods applied, even when there was an unlawful excessive property tax assessment and payment due to a mutual mistake of fact. Consumers Power Co v Muskegon Co, 346 Mich 243; 78 NW2d 223 (1956). This precluded recovery of the unlawfully excessive tax paid by a taxpayer without knowledge of the mistake who did not discover the mistake until after expiration of the statutory periods for appeal to the local board of review and beyond. Id., at 253, 260-61 ("There is here involved no question of 'protest,' for the payor knows of nothing to protest ... He pays in ignorance, under a misapprehension of the true facts. Had he known the facts, the tax paid would have been only the sum authorized.")

However, the Michigan Legislature determined that retention by a taxing authority of unlawful excessive taxes assessed and paid on account of a mutual mistake of fact is "grotesque," "unconscionable" and "repellent." Id. at 251, 254 and 256 (Smith, J., dissenting) (later adopted as law by Spoon-Shackett Co, Inc v Oakland Co, 356 Mich 151; 97 NW2d 25 (1959). Adhering to the principle that "[a]n honorable government [will] not keep taxes to which

it is not entitled ...,"[1] the Michigan Legislature therefore enacted a provision permitting a taxpayer to commence an action within a three year limitations period for a refund of excessive taxes assessed and paid due to a mutual mistake of fact. MCL 211.53a ("section 53a"). Specifically, section 53a provides that:

> Any taxpayer who is assessed and pays taxes in excess of the correct and lawful amount due because of a clerical error or mutual mistake of fact made by the assessing officer and the taxpayer may recover the excess so paid, without interest, if suit is commenced within three years from the date of payment, notwithstanding that the payment was not made under protest.

For each of several years, Appellant Ford Motor Company ("Ford") prepared and filed with the Appellee taxing jurisdictions personal property statements which inadvertently over-stated the amount of its taxable property, including reporting of the same property twice. Relying on those personal property statements as accurate, the assessing officers of these three jurisdictions computed assessments and issued tax bills in excessive amounts. Ford timely paid these tax bills, and the jurisdictions accepted payment, without either party realizing that the bills were excessive. Ford discovered the errors after the generally applicable limitations period for protesting or appealing excessive assessments and tax bills. It then filed appeals in the MTT against the Appellees pursuant to section 53a for refund of the excess payments made during the three year period covered by section 53a.

Without a hearing, the MTT dismissed Ford's refund appeals. The MTT erroneously held that there was no mutual mistake of fact within the meaning of section 53a. Because the inadvertant excessive tax assessments and payments originated out of Ford's preparation of its personal property statements, in the mistaken view of the MTT, there was merely a unilateral

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[1] Pittsburgh & Midway Coal Mining Co. v Arizona Department of Revenue, 776 P2d 1061, 1065 (Ariz 1989).

mistake made by Ford. Moreover, the MTT erroneously held that an inadvertant overstatement of property on a personal property statement is not the type of error correctable under section 53a.

The MTT decisions were affirmed by a majority of the three member Court of Appeals panel below. The majority of the Court of Appeals acknowledged that the assessing officers of Appellees in fact made a mistake in making an excessive assessment without knowledge of the excess, but it believed that that mistake and Ford's mistake were not mutual. The majority of the Court of Appeals held that, for there to be a mutual mistake of fact under section 53a, Ford and the assessing officer must share the same mistaken belief, and that shared belief must be the direct cause of both the assessor's over assessment and Ford's over payment. The majority of the Court of Appeals held that the direct cause of the assessor's over assessment was his mistaken belief that Ford's personal property statements were accurate, and that the direct cause of Ford's over payment was its mistaken belief that it owned specific property that was taxable. The majority of the Court of Appeals denied section 53a relief because it concluded that these beliefs of the parties were not the same, even though the personal property statement, mistakenly believed by the assessor to be accurate in making his assessment, embodied and reflected Ford's mistaken belief that it owned property reported on the statement.

Judge Griffin wrote a separate, well-reasoned dissenting opinion in the Court of Appeals below. Judge Griffin correctly concluded that both Ford and the assessing officers of Appellees made the same factual mistake – they believed that property reported on the personal property statement existed and was taxable, when that was not the case. Judge Griffin further concluded that that factual mistake was relied upon both by the assessor in making the over assessment and

by Ford in making the overpayment. Therefore, the minority opinion properly concluded that Ford is entitled to section 53a relief.

The majority of the Court of Appeals (and the MTT) committed numerous errors of law and applied wrong legal principles. Judge Griffin, by contrast, made the correct legal analysis and reached the correct legal result. The majority of the Court of Appeals (and the MTT) failed to, but Judge Griffin did, define the term "mutual mistake of fact," for purposes of section 53a, in accordance with the plain, ordinary, clear and well established meaning of the term. The majority of the Court of Appeals instead engrafted its direct causation and other requirements and limitations on section 53a "mutual mistake of fact" relief, which are neither found in the language of the provision nor explicit or implicit in the plain, ordinary, clear and well established meaning of the phrase. In addition to this improper judicial exercise of legislative powers, the majority of the Court of Appeals applied its purported section 53a direct causation and other requirements and limitations in an irrational and convoluted manner. For these reasons, discussed in detail below, this Court should reverse the majority decision of the Court of Appeals below.

## II. THE PERSONAL PROPERTY ASSESSMENT SYSTEM

An understanding of our State's system for assessment and payment of personal property taxes is essential to analysis of the questions presented in these cases. All personal property located in the State of Michigan is subject to tax, unless expressly exempted. MCL 211.1. The assessing officer of a local taxing jurisdiction is required to ascertain the taxable property in the jurisdiction. MCL 211.19(1). If an assessing officer believes a person owns personal property, the assessing officer must require the person to make a statement each year of all the personal property owned by the person and located in the assessor's taxing jurisdiction as of December 31

of the preceding year. MCL 211.19(2); 1979 ACS 9, R 209.26(5). The personal property statement must be on the form approved by the State Tax Commission. 1979 ACS 9, R 209.26(5); Form L-4175 Personal Property Statement (Attached as Exhibit A).

To fulfill these duties, local assessing officers generally send personal property statements to taxpayers in December or January of each year. Taxpayers are required to complete and return the personal property statements on or before February 20 of each year. MCL 211.19(2). On that statement, the taxpayer must report the classification, original date of acquisition and original purchase price of all personal property owned by the taxpayer and located in the assessing jurisdiction as of December 31 of the prior year. Exhibit A.

On receipt of a personal property statement from a taxpayer, the assessing officer applies depreciation multipliers, adopted by the State Tax Commission and prescribed on the statement, to the original purchase price of the property reported on the statement. Id. The resulting product, which the assessor is required to set forth on the statement, constitutes the true cash value of the property upon which the tax assessment is based. Id.; Const 1963, art 9, §3; MCL 211.27a.

On or before the first Monday in March of each year, the assessing officer is required to prepare (or supervise the preparation of) and to certify an assessment roll that includes the values of all the personal property of each person. MCL 211.10d(7) and 211.24(1)(f); 1979 ACS 9, R 209.26(8). The assessment roll must be prepared in accordance with the General Property Tax Act at the legislatively prescribed level of valuation. 1979 ACS 9, R. 209.26(2). The assessor is then required to send by first class mail a notice of assessment to each property owner before the first meeting of the board of review of the local taxing jurisdiction, which usually occurs in the

second or third week of March of each year. 1979 ACS 9, R 209.26(7). Bills for the tax are subsequently sent to and paid by the taxpayer.

Due to the sheer number of personal property statements filed with assessors and the short timeframe to process the statements, it is common practice for assessors to accept as accurate, and to base their assessments on, the information provided by taxpayers in their personal property statements. However, assessors have the right to audit taxpayers whose personal property statements are believed by the assessors to be incorrect, MCL 211.22, and assessors are required to exercise independent judgment. MCL 211.24(1)(f) ("In determining the property to be assessed and . . . the value of that property, the assessor is not bound to follow the statements of any person, but shall exercise his or her best judgment."); State Tax Commission Bulletin No. 12 of 1999 ("The assessor SHALL NOT AUTOMATICALLY accept the true cash values calculated by the taxpayer. It is the assessor's responsibility to review the multipliers selected by the taxpayer and to make an independent judgment regarding the correct multipliers to use.") (Emphasis in original).

An assessing officer who intentionally violates his duties has committed a criminal offense. MCL 211.116 ("If [an] assessing officer . . . shall willfully assess any property at more or less than what he believes to be its true cash value, he shall be guilty of a misdemeanor..."); MCL 211.119 ("...a person who willfully neglects or refuses to perform a duty imposed upon that person by [the General Property Tax Act] is guilty of a misdemeanor..."); MCL 211.10d(9) ("An assessor who certifies an assessment roll in which he or she did not have direct supervision is guilty of a misdemeanor.")

## III. STATEMENT OF FACTS AND MATERIAL PROCEEDINGS

The petitions filed in the MTT by Ford against the three Appellee taxing jurisdictions, Appendix ("App") at 17a-25a, 38a-41a, 44a-47a (the "Petitions"), were merely reviewed on their face and dismissed by the MTT. As a result, there is no factual record in these cases. The facts set forth below are as set forth in the Petitions and should be assumed to be true for purposes of this appeal.

In the personal property statements filed by Ford with Appellees for the 1998 and/or 1999 tax years, Ford inadvertently reported various items of equipment twice, misclassified various items of equipment, and included various items of equipment that were retired, idled or otherwise not subject to tax. App at 18a-19a, 39a-40a, 45a. The Appellees' assessing officers relied on these personal property statements as accurate. As a result, the assessing officers computed assessments and issued tax bills in excess of the correct and lawful amount due and owing. App at 18a, 39a, 45a. Ford timely paid those tax bills, and each Appellee taxing jurisdiction accepted these payments, without knowledge by either party that the tax bills were excessive, based on Ford's over statements in reporting.

Ford subsequently discovered the errors in its personal property statements, and in the resulting excessive assessments and tax payments, after expiration of the typically utilized period for appealing excessive assessments.[2] Because the excessive assessments and payments were due to a mutual mistake of fact made by Ford and the assessing officers, Ford filed the Petitions pursuant to section 53a. App at 17a-18a, 38a-39a, 44a-45a. The Petitions claim a refund of the excessive taxes paid within three years before the date of filing the Petitions. Section 53a provides as follows:

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[2] These periods are March of the year involved for the local board of review protest and June 30 of the year involved for the MTT petition. MCL 205.735(1), (2).

> Any taxpayer who is assessed and pays taxes in excess of the correct and lawful amount due because of a clerical error or mutual mistake of fact made by the assessing officer and the taxpayer may recover the excess so paid, without interest, if suit is commenced within three years from the date of payment, notwithstanding that the payment was not made under protest.

The MTT dismissed Ford's Petitions in the three present cases, on a sua sponte basis in one case and by granting motions for summary disposition filed by Appellees in the other two cases. App at 26a-27a, 34a-37a, 42a-43a, 48a-50a. The MTT decisions ordering these dismissals are substantially the same for each of the three cases, and were rendered by the same MTT member, who is not an attorney and has no formal training in the law.

The MTT held that section 53a did not apply. It wrongly concluded that there was merely a unilateral mistake of fact by Ford in incorrectly preparing its personal property statements, even though the assessing officers relied on the accuracy of the statements and computed excessive assessments. App at 26a-27a, 36a, 42a-43a, 49a-50a. The MTT Decisions stated that Ford had knowledge of its property and had the responsibility for preparing the personal property statements. App at 26a-27a, 36a, 43a, 49a. The MTT Decisions also stated that it was reasonable for the assessing officers to rely on the personal property statements. App at 36a, 43a, 49a.[3]

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[3] The MTT relied upon as support for its positions the prior MTT decision in General Products Delaware Corporation v. Leoni Township, et al, MTT Docket No. 249550 (March 8, 2001). (Attached as Exhibit B). General Products is an incomprehensible, internally inconsistent, extremely complex and rambling 30-plus page opinion in which the MTT defines the term "mutual mistake of fact" for purposes of section 53a, and which holds that errors made by a taxpayer in preparing a personal property statement can never give rise to such a mutual mistake of fact. The MTT decision in General Products, which was written by a non-attorney MTT member with no formal training in the law, was published and designated by the MTT to be precedential. Although it disagreed with the MTT on a number of crucial points, the Court of Appeals affirmed the MTT decision in General Products. General Products Delaware Corporation v. Leoni Township, et al, unpublished opinion per curiam of the Court of Appeals, decided May 8, 2003 (Docket No. 233423) (Attached as Exhibit C).

There are four MTT dismissal orders below, two in the case involving Appellee Bruce Township (the "Bruce Township case"), and one in each of the cases involving the two other Appellees. App at 26a-27a, 34a-37a, 42a-43a, 48a-50a. In the Bruce Township case, the Petition incorrectly named the City of Romeo as the Respondent, when the correct Respondent is Bruce Township. App at 17a, 28a-29a. The Court of Appeals reversed the MTT's dismissal of the Petition in the Bruce Township case, and remanded the case to the MTT for the purpose of addressing the issue of joinder or substitution of parties. App at 28a. Ford then filed a motion with the MTT to substitute Bruce Township as the Respondent instead of the City of Romeo and to amend the Petition in several respects, including reducing the number of parcels of personal property covered by the Petition from five to two. App at 28a-33a.

The MTT granted Ford's motion to substitute parties in the Bruce Township case, but it denied Ford's motion to amend the Petition and dismissed the case for two reasons. First, the MTT again held that Ford failed to allege a qualifying section 53a claim. Second, the MTT held that the amended Petition violated the Tax Tribunal rules of practice and procedure which generally prohibit a petition from covering more than one parcel.[4] App at 35a-36a.

On October 5, 2004, the Court of Appeals issued its decisions below, consisting of a published decision in the Bruce Township case and an unpublished decision in each of the cases involving the other two Appellees. App at 51a-65a, 66a-73a, 74a-81a. (The Court of Appeals decisions below are collectively referred to herein as the "COA Decisions"). Of the three-judge Court of Appeals panel, two judges affirmed the result of the MTT decisions below, albeit on different grounds. App at 51a-58a, 66a-72a, 74a-8a. However, the Chief Judge of the panel —

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[4] The MTT member who rendered the decisions below did not object to the fact that the unamended Petition in the Bruce Township case covered five parcels of property. Nor did he object to the fact that the Petitions in the cases involving the other two Appellees also covered multiple parcels.

Judge Griffin — correctly determined that there was a section 53a mutual mistake of fact and issued a dissenting opinion. App at 59a-65a, 73a, 81a. The majority and Judge Griffin's opinions in each of the three cases are substantially the same.

The majority opinion in the COA Decisions correctly held that the meaning of the phrase "mutual mistake of fact" in section 53a presents an issue of statutory construction, to which the following fundamental principles are applicable:

> In construing a statute, our goal is to ascertain, and give effect to, the intent of the Legislature; thus, we first consider the statute's language. *In re MCI*, 460 Mich 396, 411; 596 NW2d 164 (1999). If the plain and ordinary meaning of the language is clear, judicial construction is neither necessary nor permitted. *Sun Valley Foods Co v Ward*, 460 Mich 230, 236-237; 596 NW2d 119 (1999). The fair and natural import of its terms, in view of the subject matter of the law, governs. *In re Wirsing*, 456 Mich 467, 474; 573 NW2d 51 (1998). (App at 53a, 67a-68a, 76a.)

The majority opinion then recognized that the phrase "mutual mistake" has "acquired a peculiar and appropriate meaning in the law" under MCL 8.3a, thereby permitting resort to a legal dictionary to ascertain the meaning of the phrase.[5] App at 54a, 69a, 77a.

Based on definitions quoted from Black's Law Dictionary (7th ed, 1999, p 1017), the majority opinion in the COA Decisions concluded that "a 'mutual mistake of fact' is a shared or common error, misconception, misunderstanding, or erroneous belief as to a material fact." App at 54a-55a, 69a, 77a. The majority opinion appears to have acknowledged that, under these dictionary definitions, there was a mutual mistake of fact in the present cases: "When an assessor assesses a tax in excess of the correct and lawful amount due and the taxpayer pays it, there is

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[5] MCL 8.3a provides that:

> All words and phrases shall be construed and understood according to the common and approved usage of the language; but technical words and phrases, and such as may have acquired a peculiar and appropriate meaning in the law, shall be construed and understood according to such peculiar and appropriate meaning.

always a mistake that is mutual in the sense that both parties made a mistake." App at 55a, 69a, 78a. However, after making this statement, the majority opinion wrongly concludes: "but, there is not always a 'mutual mistake of fact.'" Id.

The majority opinion in the COA Decisions concluded that more is required for there to be a mutual mistake of fact under section 53a. It held that the **direct** cause of the assessor's excess assessment and the taxpayer's excess payment must be the same mistake shared by both parties. App at 55a, 69a, 77a. ("MCL 211.53a ... requires that both the assessing officer and the taxpayer have the same erroneous belief regarding the same material fact which **directly** caused both the excess assessment and excess payment of taxes.") (Emphasis supplied).

**The majority opinion cited no authority to support this direct causation requirement. Neither the dictionary definitions nor the plain language of section 53a support the requirement. The majority opinion usurped a legislative function and rewrote section 53a.**

The majority opinion in the COA Decisions determined that the **direct** cause of the assessing officer's excess assessment was his reliance on Ford's incorrect personal property statement — his mistaken belief that the statement was accurate.[6] The majority opinion stated that the **direct** cause of Ford's excess payment was its mistaken belief regarding the nature and taxability of its property. The majority opinion concluded that these **direct** causes of the excess assessment and the excess payment were different factual mistakes of the parties, i.e., the parties made different — not mutual — mistakes of fact. Specifically, the majority opinion stated:

> Here, the assessing officer and the taxpayer, petitioner, were not operating under the same mistake of fact. The **direct** cause of the

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[6] In making this determination, the majority opinion explicitly disagreed with the MTT's belief that the assessing officer makes no mistake in relying on a taxpayer's incorrect personal property statement in making an over assessment.

> excess assessment was the assessing officer's reliance on petitioner's personal property statements which were represented as full and true statements of all tangible personal property owned or held by petitioner. It is undisputed that the assessing officer did not conduct any independent inventory as to petitioner's assets; accordingly, the assessor's "mistake of fact" was his erroneous belief that petitioner's disclosure of property was accurate. The **direct** cause of petitioner's excess payment of the taxes was its own mistake as to the nature of its personal property. In other words, its "mistake of fact" was its erroneous belief that it owned specific personal property that was taxable. Because the assessing officer and petitioner were not operating under the same mistake of fact, a refund under MCL 211.53a was not available ... App at 55a, 69a, 77a. (Emphasis supplied).

Judge Griffin, the chief judge of the three-judge Court of Appeals panel, determined that there was a section 53a mutual mistake of fact in the present cases. Judge Griffin criticized the MTT and the majority opinion in the COA Decisions for their application and interpretation of the language of section 53a. Judge Griffin quoted the same Black's Law Dictionary definitions as quoted by the majority opinion. However, Judge Griffin correctly concluded that nothing in those definitions conditions availability of section 53a upon the parties sharing the same mistake of fact that **directly** causes the excess assessment and the excess payment. App at 63a, 73a, 81a. ("[T]he majority [opinion] ignores the technical understanding of the term "mutual mistake" and substitutes its own construction of the statute...").

Judge Griffin recognized that both the assessing officer and Ford believed that property reported on Ford's personal property statements was taxable, when it was not. This mistaken belief was shared by and common to the parties and, therefore, was a mutual mistake of fact. The assessor relied on this mistaken factual belief in over assessing. Ford relied on this mistaken factual belief in overpaying. Therefore, Judge Griffin decided section 53a is applicable:

> Here both parties shared the same factual mistake. They mistakenly believed that all of the property listed on the personal property statement was taxable to petitioner, when it was not ... Both parties mutually relied on this factual mistake: respondent

> relied on the mistake to assess the property and enforce the tax, and petitioner relied on the mistake in paying the tax. Therefore, the parties committed a mutual mistake of fact that was intended to be remedied by the Legislature. App at 62a, 73a, 81a.

In support of this conclusion, Judge Griffin quoted the following language from a prior published Court of Appeals decision which addressed application of section 53a to personal property: "[w]e believe §53a alludes to questions of whether or not the taxpayer has listed all of its property, or listed property that it has already sold or not yet received, etc." Wolverine Steel Co v City of Detroit, 45 Mich App 671, 674; 207 NW2d 194 (1973).[7] App at 62a, 73a, 81a.

Judge Griffin discussed the mechanics of the personal property assessment system. He concluded that denial of section 53a relief in the present cases would effectively and improperly exclude personal property from coverage by section 53a. There can be no question that this is true. Specifically, Judge Griffin reasoned as follows:

> The Tribunal's definition of mutual mistakes is excessively narrow. It would effectively eliminate personal property from the protection of MCL 211.53a. According to MCL 211.18(2), personal property is assessed after the individual taxpayer creates a personal property statement. Usually, the assessor then relies on this personal property statement to assess the taxes. Under the Tribunal's ruling, any mistake in inclusion of exempt property or doubly reported property would always be a unilateral mistake because the taxpayer acts alone in creating the property statements. Therefore, any tax on this property would not be refundable under MCL 211.53a. This is true even though both the taxpayer and the

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[7] The majority opinion in the COA Decisions rejected this interpretation of section 53a by the Court of Appeals in Wolverine Steel because it "does not incorporate the "mutuality" component of the analysis." App at 57a, 71a-72a, 80a. The Court of Appeals in Wolverine Steel in fact held that Section 53a was inapplicable because the particular mutual mistake at issue in the case, arising in connection with an improperly prepared personal property statement, was a mistake of law, not fact (whether property qualified for a statutory exemption). This resulted in the holding reflected in the language quoted above from Wolverine Steel being obiter dictum, which the majority opinion in the COA Decisions used as another reason for rejecting that holding. Id. Wolverine Steel, and the fact that it strongly supports Ford's position, is discussed in depth below.

> assessor are mistaken regarding whether the property exists or if it is taxable. App at 61a, 73a, 81a.

The majority opinion in the COA Decision in the Bruce Township case affirmed the MTT's denial of Ford's motion to amend its Petition to reduce to two the number of covered parcels of personal property. Having affirmed the MTT's dismissal of the case for failing to entail a section 53a mutual mistake of fact, the majority opinion in the COA Decision in the Bruce Township case concluded that such amendment would be futile. App at 58a, 72a, 80a.

In his separate, dissenting opinion in the COA Decision in the Bruce Township case, Judge Griffin concluded that the MTT's refusal to allow Ford to amend its Petition was a reversible abuse of discretion. Citing this Court's decision in Sands Appliance Services, Inc v Wilson, 463 Mich 231, 239-240; 615 NW2d 241 (2000), Judge Griffin stated that a motion to amend should be granted in the absence of a particularized reason such as (1) undue delay, (2) bad faith or dilatory tactics, (3) repeated failure to cure deficiencies in previous amendments, (4) undue prejudice preventing the opposing party from having a fair trial, or (5) futility. App at 64a-65a, 73a, 81a. Judge Griffin concluded that no such particularized reason existed to prohibit amendment of the Petition in the Bruce Township case. Id. Judge Griffin further suggested that, if the MTT rules of practice and procedure in fact prohibit the filing of a Petition covering multiple parcels of property, Ford should be allowed to split the Petition into two petitions, with each petition covering a separate parcel.[8]

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[8] As a precautionary measure, Ford filed a separate second petition in the MTT with respect to the property in Bruce Township, thereby causing there to be two petitions outstanding to address the one parcel per-petition issue. That second petition (MTT Docket No. 294990) was dismissed by the MTT as duplicative of the current Petition in the Bruce Township case. The Court of Appeals affirmed the MTT's dismissal of that second petition (Court of Appeals No. 247186). Ford then filed with this Court (Supreme Court No. 127733) an application for leave to appeal dismissal of that second petition, and on October 19, 2005 this Court entered an Order

## IV. STANDARD OF REVIEW

The present cases involve issues of statutory construction which this Court reviews *de novo*. Danse Corp v Madison Heights, 466 Mich 175, 178; 644 NW2d 721 (2002). MTT decisions are subject to judicial review and are reversible for fraud, error of law or application of wrong principles. Professional Plaza, LLC v Detroit, 250 Mich App 473, 474; 647 NW2d 529 (2002); Michigan Milk Producers Ass'n v Dep't of Treasury, 242 Mich App 486; 618 NW2d 917 (2000). Here, there were numerous instances of error of law and application of wrong principles in the MTT Decisions and in the majority opinion in the COA Decisions. Accordingly, each must be reversed.[9]

## V. ARGUMENT

### A. The Present Cases Involve A Mutual Mistake Of Fact Under Consumers Power And, Therefore, Under Section 53a.

This Court rendered its decision in Consumers Power in 1956, two years prior to enactment of section 53a in 1958. In Consumers Power, the local assessor inadvertently assessed personal property and issued a tax bill in excess of the amount lawfully due and owing. The taxpayer paid the bill without knowledge of the error. The taxpayer subsequently discovered the error and sued to recoup the excessive amount of the tax.

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holding that application in abeyance on the ground that the decision in the present cases may resolve the one parcel per-petition issue.

[9] The majority opinion in the COA Decisions notes that "[w]e accord deference to the MTT's interpretation of a statute that it is legislatively charged with enforcing, **although we are not bound by that interpretation**." App at 53a, 68a, 76a. (Emphasis added and internal citations omitted). Yet, here the decisions below of the MTT member – a non-attorney with no formal training in the law - should not have been given any deference because of their egregious errors of law, which are detailed below.

The majority opinion of the Court in Consumers Power denied the taxpayer's claim because, at that time, the claim was based solely upon equitable principles. There was no statutory provision then in effect which permitted refund of the excess taxes. The majority opinion in Consumers Power ruled that taxation matters are governed solely by statutory and constitutional provisions without any regard for equitable principles. It quoted the following language from the Court's prior decision in Langford v Auditor General, 325 Mich 585 (1949):

> Governmental powers of taxation are controlled by constitutional and statutory provisions ... Hence, it is not possible to adjudicate issues arising under taxation laws by the general application of equitable principles. This phase of the law seems to have been overlooked by plaintiffs who stress their right to relief in the instant case on equitable, rather than legal, grounds.

Consumers Power, at 247 (quoting Langford). Although the majority opinion in Consumers Power denied the taxpayer's claim for refund, it characterized the underlying fact pattern as entailing a mutual mistake of fact. Consumers Power, at 251 ("To grant the relief requested by the plaintiff would require this Court to exercise legislative prerogatives — namely, to write into the statute the right to recover taxes paid under **mutual mistake**. This cannot be done."). (Emphasis added).

In this pre-section 53a case, Justice Talbot Smith wrote an impassioned dissenting opinion highly critical of the majority opinion in Consumers Power.[10] Justice Smith concluded that the taxpayer should be allowed restitution of the excess tax payment. He acknowledged that matters of taxation are governed by statutory and constitutional provisions. However, he determined that not permitting restitution of excessive taxes inadvertently assessed and paid would result in an unjust enrichment to the taxing authority that was "grotesque,"

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[10] As discussed below, in Spoon-Shackett Co, Inc v Oakland Co, 356 Mich 151; 97 NW2d 25 (1959), this Court overturned the majority opinion in Consumers Power and adopted as law Justice Smith's dissenting opinion in Consumers Power.

"unconscionable" and "repellent." Id. at 251, 254, 256. Justice Smith determined that application of equitable principles must be applied to correct the error:

> It is my opinion that under existing Michigan law we require no legislative authority to order the restitution of monies paid to and received by the taxing authorities through **mutual mistake of fact**. It is enough that we have no valid statute forbidding it. It seems beyond question that the excess moneys were paid involuntarily. One who pays 10 times as much in taxes as he should, because of a **mutual mistake of fact** can in no real sense be said to be paying "voluntarily".[11]

Id. at 260. (Emphasis supplied). Justice Smith also concluded that "[w]hat we have before us is simply an overpayment, to the taxing authorities, arising out of a **mutual mistake of fact**..." Id. at 253 (Emphasis supplied). Furthermore, Justice Smith quotes from a number of court cases and other authorities characterizing as a "**mutual mistake of fact**" an inadvertant excessive

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[11] As indicated in the above-quoted language, the mutual mistake of fact in Consumers Power resulted in a tax assessment and payment of approximately ten (10) times the amount actually owing. However, an inadvertant excessive assessment and payment of such magnitude is clearly, in Justice Smith's view, not a precondition to the error being a mutual mistake of fact – this merely bears on whether the mutual mistake is so "unconscionable" as to come within "the reach of the chancellor's arm" necessitating the Court to "employ [its] equitable powers in taxation cases" which are generally governed solely by constitutional and statutory law. Id. at 256, 263. Moreover, in several places in his dissenting opinion in Consumers Power, Justice Smith indicates that an inadvertant excessive tax assessment and payment of two (2) times the amount actually owing warrants equitable restitution. Id. at 262 ("double, or manifold, payment of the same tax"), and Id. at 263 (distinguishing another case that denied equitable restitution because "[t]he city has received its taxes, not 10 times over, or even twice over, but once."). Moreover, the actual dollar amount of the excess assessment and payment in Consumers Power was only $18,674.03. Id. at 252. **In any event and most importantly, the section 53a statutory remedy for mutual mistake of fact makes no mention whatsoever of the magnitude of the mistake.**

On a related point, the mutual mistake of fact in Consumers Power originated with the assessor mistakenly over assessing the property. However, while an assessor-originated mutual mistake may strengthen the case for equitable intervention, there is no indication in Consumers Power that a mistake which involves both the taxpayer and the assessor, but which is originated by the taxpayer, is not a mutual mistake of fact. **In any event and most importantly, the section 53a statutory remedy for mutual mistake of fact makes no mention whatsoever either party originating the mistake. The language of section 53a speaks of mutuality, not causation.**

assessment by a taxing authority and payment by the taxpayer of the resulting excessive tax bill. Id. at 257, 258 (quoting from In re Wing, 162 Misc 551 (295 NYS 336) which characterized such a fact pattern as a "**mutual mistake of fact**") and 259 (quoting Betz v City of New York, 119 App Div 91 (103 NYS 886) characterizing such a fact pattern as a "**mutual mistake of fact.**"). (Emphasis supplied).

A number of times in his dissenting opinion in Consumers Power, Justice Smith identifies, or quotes language from other cases or authorities identifying, as a "mistake of fact" (and not specifically a "mutual mistake of fact") an inadvertant over assessment by the assessor and over payment by the taxpayer. See, for example, Consumers Power at 261, 262. However, it is clear that Justice Smith intended to characterize an inadvertant over assessment by the assessor coupled with an inadvertant over payment by the taxpayer as a mutual mistake of fact. This is apparent from the following explanation by Justice Smith of Lovett v City of Detroit, 286 Mich 159, where the city treasurer erroneously told a landlord that taxes had been paid (thereby causing the landlord not to sue the tenant for the same):

> **It is not enough that Lovett involved a unilateral mistake by the city treasurer. The missing ingredient is the precise issue before us – the fact of overpayment, excess payment, as a result of which the municipality reaps a harvest of riches at the expense of the taxpayer.**

Consumers Power at 265. (Emphasis supplied).

In Spoon-Shackett, supra, this Court again addressed the question of whether equitable principles should be applied to correct an inadvertent excessive tax assessment. A majority of the Court in Spoon-Shackett answered that question in the affirmative, overruling the majority opinion and adopting Justice Smith's dissenting opinion in Consumers Power. Accordingly,

Justice Smith's dissenting opinion in Consumers Power became the majority opinion of this Court.

In 1958, two years after this Court's decision in Consumers Power, the Legislature enacted section 53a. See MCL 211.53a, Historical and Statutory Notes. This provision permits a refund action to be instituted within a three-year limitations period by "[a]ny taxpayer who is assessed and pays taxes in excess of the correct and lawful amount due because of a clerical error or **mutual mistake of fact** made by the assessing officer and the taxpayer ..." MCL 211.53a. (Emphasis supplied). Section 53a was enacted in response to the Consumers Power decision. It specifically provides the statutory authorization the majority opinion in Consumers Power held was necessary to permit refund of excessive taxes arising from a mutual mistake of fact.[12]

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[12] Spoon-Shackett, which overruled the majority opinion and adopted Justice Smith's dissenting opinion in Consumers Power, was decided in 1959. The Court did not rely upon section 53a in Spoon-Shackett, basing its decision on equitable grounds. Moreover, it appears that the tax years at issue in Spoon-Shackett preceded the effective date of section 53a. Also, the taxpayer in Spoon-Shackett did not actually pay and seek a refund of the excessive taxes, which are requirements for application of section 53a.

Spoon-Shackett is not the only case where this Court mentioned section 53a. In Booker v City of Detroit, 469 Mich 892 (2003), where this Court granted equitable relief to a taxpayer who paid taxes after the taxing unit foreclosed upon and sold his property, Justice Young issued a dissenting opinion indicating that section 53a is to be broadly interpreted:

> Finally, I note that plaintiff, to the extent that the foreclosure of his property and his payment of delinquent taxes may have resulted in an overpayment, presumably had an adequate remedy at law. See *MCL 211.53a* ("any taxpayer who...pays taxes in excess of the correct and lawful amount due because of a clerical error or mutual mistake of fact...may recover the excess so paid...if suit is commenced within 3 years"). Taxation is uniquely and extensively governed by constitutional and statutory provisions,...and I question this Court's authority to invoke equitable principles as a means of avoiding the requirements of the GTPA and the Detroit City Charter.

Id. at 897-898.

**In the present case, for the first time this Court will squarely address section 53a.**

There can be little doubt that section 53a was enacted in response to, and to legislatively overrule, the majority opinion in Consumers Power. In Spoon-Shackett, this Court said the following:

> Should we so decide by majority vote [to provide a remedy under equitable principles], it would become unnecessary to consider effect, retroactive or otherwise, of the pendente legislative enactment to which counsel refer in their brief..., by which the legislature since handing down of Consumers and entry of decree herein has provided (so far as concerns property taxes) what our majority in Consumers should have upheld, that is, the right of taxpayers to equitable relief...

Spoon-Shackett at 168. The majority opinion in the COA Decisions also acknowledges that section 53a was enacted in response to Consumers Power. App at 54a, 68a, 76a ("MCL 211.53a was enacted following our Supreme Court's decision in Consumers Power...") ("Subsequently, in 1958, the Legislature exercised its authority and provided a limited remedy in cases of excess taxation..."). Moreover, this Court's judgment in Consumers Power constitutes the then common law, and legislation (such as section 53a) is presumed to be enacted with knowledge of the then common law. See, e.g., Pulver v Dundee Cement Co, 445 Mich 68, 75; 515 NW2d 728 (1994); Equitable Trust Co v Milton Realty Co, 261 Mich 571, 575; 246 NW 500 (1933).

Legislation (such as section 53a) is also presumed to be enacted in accord with common law (this Court's decision in Consumers Power), to the extent the legislation does not overturn or expressly conflict with common law. Id. The Legislature's intended meaning of the term "mutual mistake of fact" in section 53a must be deemed the same as this Court's intended meaning of the term in Consumers Power. This conclusion is also mandated by MCL 8.3a, which provides as follows:

> All words and phrases shall be construed and understood according to the common and approved usage of the language; but technical words and phrases, and such as may have acquired a peculiar and

> appropriate meaning in the law, shall be construed and understood according to such peculiar and appropriate meaning.

The phrase "mutual mistake of fact" should be considered a technical phrase that has acquired a peculiar and appropriate meaning in the law (this Court's understanding of the phrase in Consumers Power) and, for purposes of and as used in section 53a, the phrase must be construed and understood in accord with that peculiar and appropriate meaning.[13] The result is the same even if the phrase "mutual mistake of fact" is not considered a technical term – this Court's use of the phrase in Consumers Power is the common and approved usage of the phrase, and the phrase must be construed and understood for purposes of section 53a in accord with Consumers Power.

The meaning ascribed to the term "mutual mistake of fact" by this Court in Consumers Power, in both the majority opinion and in Justice Smith's dissenting opinion, was the same. Two factual elements — inadvertent excessive assessment by the assessing officer and payment by the taxpayer of the resulting excessive tax bill without knowledge of the error — were characterized as a mutual mistake of fact. These two factual elements, and nothing more, is all that is required to give rise to a mutual mistake of fact within the meaning of section 53a.

These two factual elements exist in the present cases. The assessing officers of the Appellee taxing jurisdictions over-assessed Ford's personal property without being aware of the over-assessment. Ford paid the resulting excessive tax bill without being aware of the

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[13] Both the majority opinion and Judge Griffin's dissenting opinion in the COA Decisions indicate that the phrase "mutual mistake of fact" is a term of art that has acquired a peculiar and appropriate meaning in the law. However, as pointed out by Judge Griffin, the majority opinion does not apply, and in fact distorts, that meaning for purposes of section 53a. App at 63a, 73a, 81a ("The majority ignores the accepted technical meaning of the term "mutual mistake" and substitutes its own construction.") By contrast, Judge Griffin's application of the phrase "mutual mistake of fact" for purposes of section 53a is consistent with the peculiar and appropriate meaning in the law this technical phrase has acquired.

overpayment. Accordingly, there is a "mutual mistake of fact" in the present cases under Consumers Power and section 53a.

### B. Other Applicable Definitions Of Mutual Mistake Of Fact Are Also Satisfied.

In addition to constituting a "mutual mistake of fact," as that term was understood by this Court in Consumers Power and must be interpreted in section 53a, the fact pattern in the present cases also satisfies the legal dictionary definition of the term. After stating that the term "mutual mistake of fact" was a term of art with an acquired meaning in the law, both the majority opinion and Judge Griffin's dissenting opinion in the COA decisions concluded that reference to a legal dictionary to define the term is appropriate. App. at 54a-55a, 61a-62a, 69a, 73a, 77a, 81a. Both the majority opinion and Judge Griffin's opinion cite essentially the same Black's Law Dictionary definition – "a 'mutual mistake of fact' is a shared or common error, misconception, misunderstanding or erroneous belief as to a material fact." Id.

Judge Griffin properly determined that the fact pattern in the present cases constituted a "mutual mistake of fact" under this legal dictionary definition of the term (and, therefore, under section 53a). Judge Griffin recognized that both the assessing officer and Ford believed that property reported on Ford's personal property statements was taxable, when it was not. This belief was of a material fact and was shared by and common to the parties and, therefore, was a mutual mistake of fact. The assessor relied on this mistaken factual belief in over assessing and Ford relied on this mistaken factual belief in over paying. Therefore, section 53a is applicable. Specifically, Judge Griffin determined that:

> Here both parties shared the same factual mistake. They mistakenly believed that all of the property listed on the personal property statement was taxable to petitioner, when it was not... Both parties mutually relied on this factual mistake: respondent relied on the mistake to assess the property and enforce the tax, and petitioner relied on the mistake in paying the tax. Therefore,

> the parties committed a mutual mistake of fact that was intended to be remedied by the Legislature. (App. at 62a, 73a, 81a).

The fact pattern in the present cases also constitutes a "mutual mistake of fact" under the well established definition of the term for contract law purposes. In Atkinson v Detroit, unpublished opinion per curiam of the Court of Appeals, decided June 25, 1999 (Docket Nos. 199537, 199803), p 4 (Attached hereto as Exhibit D), the Court of Appeals relied upon the following well established contract law definition of "mutual mistake of fact":

> [A] belief by one or both parties not in accord with the facts, and the erroneous belief must relate to a basic assumption of the parties....

See, also, Shell Oil Co v Estate of Kert, 161 Mich App 409, 421-2; 411 NW2d 770 (1987) (cited in Atkinson). Both Ford and the assessors of the Appellee taxing jurisdictions had the same mistaken, shared belief in the same basic assumption – that the property reported by Ford on its personal property statements existed and was taxable.

In Atkinson, the Court of Appeals overturned a decision by the MTT and held that there was a mutual mistake of fact under section 53a where "all of the parties erroneously believed that petitioners' properties were situated within the boundaries of Detroit, rather than Grosse Pointe Park." (Exhibit D, p 4). If a mistake as to the *location* of property can constitute a mutual mistake of fact, then an even more basic mistaken belief as to the very *existence* of property qualifies a fortiori.[14]

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[14] A case even more compelling and favorable to Ford is Delta Airlines, Inc v Romulus, unpublished opinion per curiam of the Court of Appeals, decided August 2, 2002 (Docket No. 225881) (Attached as Exhibit E). In Delta Airlines, the local assessor assessed and billed the taxpayer on property that was formerly (but not then) leased by the taxpayer. The taxpayer paid the tax bill without knowledge of the error. The Court of Appeals reversed the MTT and found that there was a mutual mistake of fact correctable under section 53a. Being taxed on property one does not own or lease (as in the present cases and in Delta Airlines) is in effect taxation of non-existent property.

### C. The Direct Causation Requirement Imposed By The Majority Of The Court Of Appeals Is Erroneous.

An inadvertant excessive assessment and payment, due to an incorrect belief or assumption shared by the assessor and the taxpayer that the excess amount is owing, is a mutual mistake of fact under Consumers Power, Black's Law Dictionary, contract law and, thus, under section 53a. Nevertheless, the majority opinion in the COA decisions imposes an additional criteria for qualification, which it determined was not met in the present cases. This additional criteria is that, to have a mutual mistake of fact under section 53a, the mistake shared by both the assessor and the taxpayer must be the direct cause of both the excess assessment and the excess payment. After quoting the Black's Law Dictionary definition, quoted above in this brief, the majority opinion in the COA Decisions held the following:

> MCL 211.53a, then requires that both the assessing officer and the taxpayer have the same erroneous belief regarding the same material fact, which belief directly caused both the excess assessment and excess payment of taxes. (App at 55a, 69a, 77a).

Similarly, the majority opinion in the COA Decisions also held the following:

> The key to the "mistake of fact" analysis under MCL 211.53a is to determine what mistake of fact directly caused the assessor's excess assessment and compare it to the mistake of fact that directly caused the taxpayer's excess payment. If they are the same, the mutuality requirement of MCL 211.53a is met. (App. at 55a, 69a, 77a-78a.)

However, this direct causation criteria cannot be gleaned, expressly or by implication, from the Black's Law Dictionary definition of mutual mistake of fact quoted in and purportedly relied upon by the majority opinion in the COA Decisions – "a shared or common error, misconception, misunderstanding or erroneous belief as to a material fact." App at 54a-55a, 69a, 77a. The direct causation criteria also cannot be gleaned, expressly or by implication, from this Court's understanding and use of the term "mutual mistake of fact" in Consumers Power – an

inadvertant excess assessment by the assessing officer, coupled with payment of the excessive tax by the taxpayer without knowledge of the excess. Nor can the direct causation criteria be gleaned, expressly or by implication, from the meaning of "mutual mistake of fact" for contract law purposes – a belief by one or both parties not in accord with the facts that relates to a basic assumption of the parties.

**Most importantly, the direct causation criteria of the majority opinion in the COA Decisions is also not to be found in the language of section 53a:**

> Any taxpayer who is assessed and pays taxes in excess of the correct and lawful amount due because of a clerical error or mutual mistake of fact made by the assessing officer and the taxpayer may recover the excess so paid, without interest, if suit is commenced within three years from the date of payment, notwithstanding that the payment was not made under protest.

MCL 211.53a. The words "because of" in section 53a import only the causation criteria that the excess assessment and payment must be "because of" the parties' mutual mistake of fact. Section 53a does not expressly require, nor must it necessarily be read to require, that the parties' mutual mistake of fact be the **direct** cause of the excess assessment and payment. It is just as, if not more, plausible to read section 53a as being available if the parties' mutual mistake of fact is an indirect cause, or one of a number of causes, of the excess assessment and payment.[15]

In imposing a direct causation criteria, the majority opinion is interpreting and construing the language of section 53a. Under the very statutory construction principles set forth in the majority opinion, App at 53a, 67a-68a, 76a, this is impermissible if the language of section 53a is

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[15] It should be noted that the majority opinion in the COA Decisions does not expressly base its direct causation criteria on the "because of" language in section 53a, but rather apparently and without explanation regards the criteria as inherent in the mutuality requirement of section 53a. App at 57a, 72a, 80a (the majority opinion rejected the statement in Wolverine Steel indicating that section 53a covers errors in personal property statements because it "does not incorporate the mutuality component of the analysis.")

clear and unambiguous, which it has been held to be. See, e.g., Redford Opportunity House v Redford Twp, unpublished opinion per curiam of the Court of Appeals, decided May 18, 2004 (Docket No. 235051) (Attached hereto as Exhibit F). If the language of section 53a is ambiguous, interpretation and construction is permissible but, because section 53a is a statute relating to taxation, it must be interpreted and construed in favor of the taxpayer (Ford) and against the taxing authority (the Appellees). See, e.g., Molter v Department of Treasury, 443 Mich 537, 543, 549; 505 NW2d 244 (1993); Michigan Bell Tel Co v Department of Treasury, 445 Mich 470; 518 NW2d 808 (1994).

Moreover, section 53a is a remedial statute. It permits taxpayers to sue for a refund of taxes assessed and paid because of a mutual mistake of fact. Prior to enactment of section 53a, the majority of this Court held that this remedy was not available. Consumers Power, supra. The Legislature enacted section 53a because lack of a remedy was unconscionable. It resulted in unjust enrichment of taxing authorities by allowing them to retain taxes to which they were not entitled. It was also unfair to taxpayers who were prohibited from recovering mistakenly made tax payments they did not owe.

Remedial statutes must be sufficiently liberally and broadly interpreted to ensure availability of the remedy intended to be conferred. See, e.g., Trepanier v National Amusements, Inc, 250 Mich App 578, 586; 649 NW2d 754 (2002) ("remedial statutes . . . should be liberally construed in favor of the persons intended to be benefited"); Rookledge v Garwood, 340 Mich 444, 453; 65 NW2d 785 (1954) (statute providing a claim is remedial and must be liberally construed); Turner v Auto Club Ins Ass'n, 448 Mich 22, 28; 528 NW2d 681 (1995) (same). The **direct** cause limitation engrafted upon section 53a, and the tortured construction of the term "mutual mistake of fact," by the majority opinion in the COA Decisions violate this principle of

statutory construction. They narrowly interpret section 53a and deny the remedy the Legislature intended to confer.

Before impermissibly imposing its direct causation criteria, the majority opinion in the COA Decisions concluded that "[w]hen an assessor assesses a tax in excess of the correct and lawful amount and the taxpayer pays it, there is always a mutual mistake of fact in the sense that both parties made a mistake ..." (App at 55a, 69a, 78a.) That should have ended the matter in favor of Ford. Nothing more is required for there to be a "mutual mistake of fact" correctable under section 53a. The addition of a non-existent **direct** cause requirement, employed by the majority opinion to conclude otherwise, must be overturned by this Court.

### D. Application Of Direct Causation Criteria By Majority Of Court Of Appeals Is Convoluted And Irrational.

After holding that its direct causation criteria applies to section 53a, the majority opinion in the COA Decisions engages in a tortuous and convoluted analysis to conclude that the criteria is not satisfied in the present cases:

> Here, the assessing officer and the taxpayer, petitioner, were not operating under the same mistake of fact. The **direct** cause of the excess assessment was the assessing officer's reliance on petitioner's personal property statements which were represented as full and true statements of all tangible personal property owned or held by petitioner. It is undisputed that the assessing officer did not conduct any independent inventory as to petitioner's assets; accordingly, the assessor's "mistake of fact" was his erroneous belief that petitioner's disclosure of property was accurate. The **direct** cause of petitioner's excess payment of the taxes was its own mistake as to the nature of its personal property. In other words, its "mistake of fact" was its erroneous belief that it owned specific personal property that was taxable. Because the assessing officer and petitioner were not operating under the same mistake of fact, a refund under MCL 211.53a was not available ... (App at 55a, 69a, 77a.) (Emphasis supplied).

Accordingly, the majority opinion in the COA Decisions stated that the **direct** cause of the assessing officer's excessive assessment was his reliance on Ford's personal property

statement — his erroneous belief that Ford's disclosure of property on the statements was accurate. The majority opinion also stated that the **direct** cause of Ford's excess tax payment was its erroneous belief regarding the nature and taxability of its property. The majority opinion concluded these mistaken beliefs were different and, therefore, that the mutuality requirement of section 53a was not met.

**This analysis creates a distinction without a difference. An inadvertant erroneously prepared personal property statement is the articulation, the manifestation, the reporting and the embodiment of the taxpayer's mistaken belief regarding the nature and taxability of its personal property. The majority opinion in the COA Decisions is essentially saying that disclosure is different than the subject disclosed or, put another way, that reliance upon a document is different than reliance upon the information contained in the document. Reliance by the assessor upon a personal property statement is the same as reliance upon the taxpayer's beliefs reflected in the statement.**

**Ford's mistaken belief that it owned and was taxable on property reported on the personal property statement is the same belief of the assessing officer arrived at by his reliance on the personal property statement.[16] That shared belief directly caused the assessor's over assessment and Ford's overpayment. Even if there is a direct causation criteria applicable to section 53a, as believed by the majority opinion in the COA Decisions, the criteria is in fact satisfied in these cases.**

The **direct** cause analysis of the majority opinion in the COA Decisions is contrary to all of the opinions in Consumers Power. If applied to the fact pattern in Consumers Power, there

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[16] This is the conclusion correctly reached by Judge Griffin in his dissenting opinion in the COA Decisions. App at 62a, 73a, 81a ("Here, both parties shared the same factual mistake. They mistakenly believed that all the property listed on the personal property statement was taxable to petitioner when it was not, given that some property was doubly reported.")

would be no mutual mistake of fact correctable under section 53a. In Consumers Power, the assessor made a mistake in entering amounts on the tax assessment rolls. This resulted in issuance of an excessive tax bill. The taxpayer paid the bill without knowledge of the error.

Under the analysis of the majority opinion in the COA Decisions, the **direct** cause of the assessor's excess assessment in Consumers Power would be his own mistake in entering excessive amounts on the tax assessment rolls — his erroneous belief that the amounts he entered on the assessment rolls were correct. Under the analysis of the majority opinion, the **direct** cause of the excess tax payment by the taxpayer in Consumers Power would be his reliance upon the tax bill prepared by and received from (and, therefore, represented to be accurate by) the assessor — the taxpayer did not attempt to verify the accuracy of the tax bill, thereby causing his mistake to be his erroneous belief that the tax bill was accurate. Accordingly, under the **direct** cause analysis of the majority opinion in the COA Decisions, the taxpayer and the assessor in Consumers Power operated under a different mistake of fact, causing there to be no mutual mistake of fact correctable under section 53a. This is absurd in light of the Legislature's purpose in enacting section 53a to provide relief in the Consumers Power – type fact pattern.

### E. Each Assessing Officer Clearly Made A Mistake.

The MTT Decisions below held that there was merely a unilateral (and not a mutual) mistake of fact. This is because the MTT decided that Ford failed to comply with its responsibility of correctly preparing its personal property statements, and because the MTT decided that the assessor was reasonable in relying upon those statements. App. at 26a-27a, 36a, 42a-43a, 49a-50a. The MTT implies that the assessor did not formulate and share with Ford a mistaken belief about the existence or taxability of the reported property. Id. The MTT portrays the assessor as merely performing the mechanical function of applying prescribed depreciation

multipliers to the cost basis of property reported on the personal property statements. The MTT cited as authority for its position below the prior MTT decision in General Products (attached hereto as Exhibit B).[17]

While it made numerous other errors, even the majority opinion in the COA Decisions properly held that the MTT was wrong on this point. The majority opinion held that the assessing officer did mistakenly believe that the personal property statement was accurate. App. at 55a, 69a, 77a. ("[T]he assessor's 'mistake of fact' was his erroneous belief that petitioner's disclosure of property was accurate.") The Court of Appeals in General Products, while it affirmed the result reached by the MTT in that case, similarly disagreed with the MTT on this point, and held that the assessor had in fact made a mistake. (Exhibit C, p 4). ("The assessor's mistake was based on petitioner's representations on its personal property statement.")

There can be little doubt that Appellees and their assessing officers each made a mistake. They issued assessments and tax bills, and accepted payment, in an amount greater than the lawful amount. These errors, unless committed intentionally, must be considered a mistake. They were certainly so considered by this Court in Consumers Power.

Appellees' assessing officers arrived at their excessive assessments by relying on Ford's incorrectly prepared personal property statements. The assessing officers must be considered to have believed that the statements were accurate, a belief that turned out to be mistaken. This

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[17] The MTT below also relied upon International Place Apts IV v. Ypsilanti Twp, 216 Mich App 104; 548 NW2d 668 (1996), where the Court of Appeals said "the figure recorded on the assessment rolls was accurate in the sense that it was the number intended by the assessor, albiet the assessor may have erred in the determination of what that number should be by failing to consider all relevant facts." Id. at 109. It should be noted that the Court of Appeals in International Place did not in fact hold that the assessor did not make a mistake in issuing an excessive assessment. Rather, it held that the mistake was not the type of mistake that was correctable under MCL 211.53b ("section 53b"). As discussed below, section 53b is a separate provision of the General Property Tax Act which, unlike section 53a, limits the types of mutual mistakes of fact correctable under the provision.

conclusion is mandated by the statutory and constitutional duties imposed on assessors, which they presumably intended to fulfill.[18] Assessors are required to ascertain and certify the existence and true cash value of property in their jurisdiction, and to make assessments based on that true cash value. Const 1963, art 9, § 3, MCL 211.10d(7); 211.19(1), (2); 211.24(1)(f); 211.27a; 1979 ACS 9, R 209.26(2), (5), (7), (8). Assessors are also required to use independent judgment in computing the values of property that is taxable, and they are prohibited from automatically accepting the taxpayer's calculations. MCL 211.24(1)(f); State Tax Commission Bulletin No. 12 of 1999.

While an assessing officer may make an excessive assessment reflecting incorrect information on a taxpayer's personal property statement, the assessor is required to formulate, and must be deemed to have in fact formulated, a belief regarding the accuracy of that statement. The assessor either believes the personal property statement is accurate, in which case he has made a mistake, or he believes the statement is inaccurate, in which case he has committed a crime. MCL 211.116 ("If [an] assessing officer . . . shall willfully assess any property at more or less than what he believes to be its true cash value, he shall be guilty of a misdemeanor..."); MCL 211.119 ("...a person who willfully neglects or refuses to perform a duty imposed upon that person by [the General Property Tax Act] is guilty of a misdemeanor..."); MCL 211.10d(9) ("An assessor who certifies an assessment roll in which he or she did not have direct supervision is guilty of a misdemeanor.")

This is not to say that a law-abiding assessor, who bases his assessment on a personal property statement, affirmatively concludes that the statement is correct. An assessor mistakenly

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[18] There is a presumption in Michigan law that public officials actually fulfill their legal duties. See, e.g., West Shore Community College v. Manistee Co Bd of Commr's, 389 Mich 287, 302; 205 NW2d 441 (1973).

believes an incorrect personal property statement is correct merely by assuming that to be the case. Black's Law Dictionary (7th ed, 1999), p 1017 (after defining the term "mistake" to include an erroneous belief, stating that "[t]he belief need not be an articulated one, and a party may have a belief as to a fact when he merely makes an assumption with respect to it, without being aware of alternatives.") While an assessor may do no more than mechanically perform a mathematical calculation, he is required to believe (and he in fact believes) that the underlying data and the result reached are correct.[19] The fact that an assessor who relies on an incorrect personal property statement mistakenly believes it to be accurate does not mean the assessor has acted unreasonably. As discussed below, the reasonableness of the parties' conduct (or the lack thereof) has no place in the section 53a mutual mistake of fact analysis.

**F. Fault Is Irrelevant.**

In his dissenting opinion in the COA Decisions, Judge Griffin criticizes the majority opinion for rewriting section 53a and adding "the limitation of fault to the legal definition of 'mutual mistake' [which] is not supported by the language of the statute or any authority." App. at 63a, 73a, 81a. The majority opinion clearly considered Ford to be **the** party at fault, stating that the personal property statements relied upon by the assessor "were represented as full and true statements" by Ford, and that the assessor "did not conduct any independent inventory" of

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[19] In its decision in General Products, the Court of Appeals makes the following reference to and analysis of the Restatement of Restitution's definition of mistake:

> "There may be ignorance of a fact without mistake as to it, since mistake imports advertence to facts and one is ignorant of many facts as to which he does not advert." Here, the assessor based the assessment on the personal property statement, thus he was ignorant of the real facts and did not have a state of mind that allowed for a mutual mistake of fact.

Exhibit C, p 3. This analysis does not stand in the present context. Assessing officers cannot claim ignorance, to avoid a section 53a mutual mistake of fact, in light of their above-described legal duties.

Ford's property. App. at 55a, 69a, 77a. The majority opinion considered the assessor's mistake benign compared to (e.g., not as bad as) Ford's mistake. In stating that Ford failed to perform its responsibility of correctly preparing personal property statements, that the assessor was reasonable in relying on those statements, and that there was merely a unilateral mistake by Ford, the MTT also perceived Ford as **the** wrongdoing party.

There is always imperfection by a taxpayer who pays an excessive tax bill without knowledge of the error. That fault by the taxpayer does not result in there not being — and in fact is essential to there being — a mutual mistake of fact. Justice Smith so concluded in Consumers Power:

> It matters not that the payor may have been careless in making his overpayment. It is the normal situation, in this type of case, that the payor has not attained the standard of care exercised by a reasonable man and that is precisely why he is in trouble.

Consumers Power, 346 Mich at 254. See also Montgomery Ward & Co v Williams, 330 Mich 275, 279; 47 NW2d 607 (1951) ("Even if a party was negligent in not ascertaining the fact, that makes no difference. Mistake of fact usually arises from lack of investigation."); Couper v Metropolitan Life Ins. Co, 250 Mich 540, 544; 230 NW 929 (1930) (same).

When there is an error in a personal property statement, an assessment or a tax bill and that error is not intentional, that error is a mistake. This is so regardless of the culpability or level of fault of the person making the error. Had the Legislature intended to deny mutual mistake of fact treatment — and section 53a relief — where the taxpayer is more at fault than the assessor, the Legislature would have and could have done so. It did not do so, and it is not for the Court of Appeals or the MTT to usurp the legislative function.

## G. The Decisions Below Would Impermissibly Exclude Personal Property From Section 53a.

While the majority opinion in the COA decisions and the MTT conclude that errors in preparing a personal property statement cannot give rise to a mutual mistake of fact correctable under section 53a, other court decisions have correctly held that they can. One such case is Wolverine Steel, supra, where, as to an excess tax assessment and payment in connection with an incorrectly prepared personal property statement, the Court of Appeals held that "a 'mutual mistake' was made." Id. at 673. The Court of Appeals in Wolverine Steel also held that "§ 53a alludes to questions of whether or not the taxpayer has listed all of its property, or listed property that it had already sold or not yet received, etc." Id. at 674. In the case, a majority of the Court of Appeals held that section 53a was inapplicable because the mutual mistake was of law and not fact. This caused the quoted language to be dicta. Nevertheless, in his dissenting opinion in the COA Decisions, Judge Griffin determined that the quoted language was "a correct construction of the statute." App. at 62a, 73a, 81a. However, the majority opinion in the COA Decisions stated that the quoted language "does not incorporate the 'mutuality' component of the analysis and, thus, is rejected." App. at 51a, 71a-72a, 80a).

A separate opinion was written by Judge O'Hara, the chief judge of the three member Court of Appeals panel in Wolverine Steel and former Supreme Court Justice sitting on the Court of Appeals by assignment pursuant to Const 1963, art 6, § 23. Judge O'Hara concluded that not only was there a mutual mistake, but one of fact and not law and, therefore, correctable under section 53a. Specifically, Judge O'Hara said the following:

> This is a strong indication of mistake. Had the company paid the tax under protest it would signify to me that the company knew exactly what it was doing and could not later be heard to claim the tax was mistakenly paid. It seems to me the company believed it owed the tax, and that the taxing authority believed it was entitled to payment of the amount assessed. Both were quite obviously

> wrong. The situation here presented is one which the Legislature intended to correct when it used the phrase "mutual mistake of fact" in the statute. The statute does not address itself as to *why* the mistake was made. So we have the element of *mistake*. Next query is, was it mutual? Certainly the taxpayer was mistaken since it paid a tax admittedly it need not have. Certainly the city was mistaken or it would not have accepted payment of a tax it knew was not owed. So now we have "mistake" and "mutuality." The only question left is, was it a mistake "of fact"?... Both parties were mistaken as to the fact of a tax being owed. I think the taxpayer should get his money back. Anything less would be unconscionable. To avoid this result is the intendment of the statute.

Id. at 676-678.

Another case involving application of section 53a to personal property statement errors is Ravenna Castings Center v Ravenna Twp, unpublished opinion per curiam of the Court of Appeals, decided May 6, 2004 (Docket No. 242286) (Attached hereto as Exhibit G). In Ravenna, two judges out of a three-judge Court of Appeals panel ruled against the taxpayer for other reasons (including because the taxpayer's petition alleged only a "mistake" and not a "mutual mistake"), but specifically held that personal property statement errors are correctable under section 53a. In Ravenna, the taxpayer challenged the MTT's holding that there is "no mutuality given petitioner's preparation of the personal property statements," on the ground that the holding creates "a per se rule that any error arising out of a personal property statement cannot provide the basis for a mutual mistake of fact." Exhibit G, majority opinion, p 4. The taxpayer asserted that such per se rule violates the holding in Wolverine Steel that **"section 53a alludes to questions of whether or not the taxpayer had listed all of its property, or listed property that it had already sold or not yet received, etc."** Wolverine Steel at 674. In response, the majority opinion of the Court of Appeals in Ravenna held as follows:

> "As petitioner argues, these examples constitute mistakes that would arise in the context of a personal property statement prepared by a taxpayer. **To the extent that the MTT's decision**

> **states that such statements can never provide the source of a mutual mistake of fact, it is in error.** But petitioner never asserted the existence of a mutual mistake of fact as a basis for invoking MCL 211.53a. Rather, its first amended petition and motion for reconsideration only allege the existence of a clerical error and a 'mistake.'"

Id. (Emphasis supplied).

Judge O'Connell, the chief judge of the three judge panel in Ravenna, issued a separate dissenting opinion criticizing the majority opinion's interpretation of section 53a as overly narrow and technical. Judge O'Connell determined that, when both the taxpayer and the assessing officer make a mistake of fact, there is a mutual mistake of fact correctable under section 53a. Specifically, Judge O'Connell concluded as follows:

> The majority's hypertechnical definition of "mutual mistake" contorts the phrase's plain meaning, making it inapplicable to a factual situation where the Legislature certainly intended it to apply. [When] a simple mistake has been made, the MTT has jurisdiction to hear the merits of a case brought within three years pursuant to the plain language in MCL 211.53a. At the very least. petitioner should have the right to develop the facts to establish that a mutual mistake of fact has occurred. App. at ____.

Exhibit G, dissenting opinion, p 1-2.

As discussed above, under Michigan's personal property tax assessment system, the taxpayer prepares and submits to the local assessor a personal property statement. MCL 211.19(2). This statement reports the classification, year of purchase and original purchase price of every single item of personal property owned by the taxpayer in the local taxing jurisdiction on the preceding December 31. Exhibit A. The assessor then computes the assessment by applying State Tax Commission prescribed depreciation multipliers to the cost basis of the reported property. Id. A tax bill is then issued to and paid by the taxpayer.

If, under this system, there is an inadvertent excessive assessment and tax bill, it is invariably due to mistakes made by the taxpayer in preparing the personal property statement.

The majority opinion in the COA Decisions and the MTT decisions below, in holding that there is no mutual mistake of fact where an excessive assessment and payment of tax results from errors made in the preparation of a personal property statement, for all intents and purposes render section 53a inapplicable to personal property.

As part of the General Property Tax Act, section 53a plainly pertains to property generally, both personal and real. It is not limited to real property, as numerous other sections of that Act are. There is no question that the Legislature knows the difference between real and personal property. See e.g., MCL 211.2 (defining real property) and MCL 211.8 (defining personal property). When the Legislature has used the general term "property" in the context of ad valorem taxation, it intended to include both real and personal property. Reading a taxpayer's entitlement to a refund of excess personal property taxes right out of section 53a is well beyond the authority of a court.[20] This factor provided a significant basis for the opinion issued by Judge Griffin in the COA Decisions determining that section 53a applies to the present cases:

> The Tribunal's definition of mutual mistakes is excessively narrow. It would effectively eliminate personal property from the protection of MCL 211.53a. According to MCL 211.18(2), personal property is assessed after the individual taxpayer creates a personal property statement. Usually, the assessor then relies on this personal property statement to assess the taxes. Under the Tribunal's ruling, any mistake in inclusion of exempt property or doubly reported property would always be a unilateral mistake because the taxpayer acts alone in creating the property statements. Therefore, any tax on this property would not be refundable under MCL 211.53a. This is true even though both the taxpayer and the assessor are mistaken regarding whether the property exists or if it is taxable. App. at 61a, 73a, 81a.

The majority opinion in the COA Decisions failed to address this draconian and unlawful exclusion of personal property from section 53a relief, resulting from its holding.

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[20] See e.g., Chiemelewski v Xermac, Inc, 457 Mich 593, 608; 580 NW2d 817 (1998); Koontz v Ameritech Servs, 466 Mich 304, 312; 645 NW2d 34 (2002).

## H. Section 53a Is Not Limited to Typographical, Transpositional Or Mathematical Errors.

The MTT below (and in General Products) relied upon International Place Apts to severely limit the scope of mutual mistakes of fact correctable under Section 53a. App. at 26a, 36a, 42a-43a, 49a. This is improper as International Place Apts dealt with section 53b, a separate provision which, unlike section 53a, explicitly limits the type of errors correctable thereunder. Notwithstanding its other deficiencies, the majority opinion in the COA Decisions held that the limitations on the types of mutual mistakes of fact correctable under section 53b do not apply to section 53a. App. at 57a-58a, 72a, 80a. Moreover, International Place Apts involved an alleged "clerical error," not an alleged "mutual mistake of fact," rendering the case further inapplicable.

Section 53b provides as follows:

> If there had been a clerical error or a mutual mistake of fact **relative to the correct assessment figures, the rate of taxation, or the mathematical computation relating to the assessing of taxes,** the clerical error or mutual mistake of fact shall be verified by the local assessing officer and approved by the board of review at a meeting held for the purposes of this section on Tuesday following the second Monday in December and, for summer property taxes, on Tuesday following the third Monday in July... If approved, the board of review shall file an affidavit within 30 days relative to the clerical error or mutual mistake of fact with the proper officials who are involved with the **assessment figures, rate of taxation, or mathematical computation** and all affected official records shall be corrected. If the clerical error or mutual mistake of fact results in an overpayment or underpayment, the rebate, including any interest paid, shall be made to the taxpayer or the taxpayer shall be notified and payment made within 30 days of the notice. A rebate shall be without interest... [A] correction under this subsection may be made in the year in which the error was made or in the following year only.

MCL 211.53b(1). (Emphasis supplied).[21] In International Place Apts, the assessing officer misfiled and failed to take into account a document reflecting improvements to the subject real property, and incorrectly under-assessed it as unimproved. International Place Apts at 106, 107. The assessor asserted that it committed a "clerical error" correctable under section 53b at the special December or July local board of review sessions.

The Court of Appeals in International Place Apts held that the assessor's error was not a clerical error correctable under section 53b. The Court of Appeals based its holding on the fact that "reading the statute [section 53b] in context, the reference to a clerical error or mutual mistake of fact is directly referenced to the use of correct assessment figures, the taxation rate, and the mathematical computation relating to the assessment of taxes." Id. at 109. The Court of Appeals also based its holding on the Black's Law Dictionary definition of the term "clerical error" as generally "a mistake in writing or copying." The Court of Appeals therefore concluded that "the statute [section 53b] itself refers to errors of a typographical, transpositional, or mathematical nature." Id. In the view of the Court of Appeals, the assessor's error was not of such a type because correction of the error would require "a reappraisal or reevaluation through the use of new or existing data..." Id.

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[21] By contrast, section 53a provides as follows:

> Any taxpayer who is assessed and pays taxes in excess of the correct and lawful amount due because of clerical error or mutual mistake of fact made by the assessing officer and the taxpayer may recover the excess so paid, without interest, if suit is commenced within three years from the date of payment, notwithstanding that the payment was not made under protest.

MCL 211.53a.

The MTT below held that section 53a does not apply to the present cases because Ford's "incorrect reporting of its personal property on its personal property statement is neither a clerical error nor a mutual mistake of fact made by the assessing officer and taxpayer, as provided by the Michigan Court of Appeals in International Place Apartments..." App. at 26a, 36a, 42a-43a, 49a. (Internal quotations and emphasis omitted). The MTT concludes that the limitation on the types of errors correctable under section 53b – those "relative to the correct assessment figures, the rate of taxation, or the mathematical computation relating to the assessing of taxes" – applies to the types of errors correctable under section 53a. The MTT is clearly wrong because the explicit limitations on errors correctable under section 53b are nowhere to be found in the language of section, and the MTT is prohibited from engrafting those limitations onto section 53a.

Semantic differences between different statutory provisions must be enforced. Stowers v Wolodzko, 386 Mich 119, 133-134; 191 NW2d 355 (1971) (Court must presume phraseological distinctions reflect a legislative intent to treat concepts differently); Lickfeldt v Department of Corrections, 247 Mich App 299, 306; 636 NW2d 272 (2001) (same). When the Legislature omits language – particularly when, as here, it has included that language elsewhere in a statute – that omission must be recognized as an expression of the Legislature's intent. As this Court has held:

> Courts cannot assume that the Legislature inadvertently omitted from one statute the language that it placed in another statute, and then, on the basis of that assumption, apply what is not there. *People v. Jahner*, 433 Mich. 490, 504; 466 NW2d 151 (1989); *Voorhies v Recorder's Court Judge*, 220 Mich. 155, 157-159; 1989 NW 1006 (1922)... In short, this court may not do on its own accord what the Legislature has seen fit not to do.

Farrington v Total Petroleum, Inc, 442 Mich 201, 210; 501 NW2d 76 (1993); see, also People v Ramsdell, 230 Mich App 386, 393; 585 NW2d 1 (1998) ("On its face, the implicit assumption

that, by accident rather than by design, the Legislature failed to include those words [from a general statute on a certain subject] in the statute covering [another aspect of that subject] is far afield from a common-sense reading.") Consequently, this Court must reject the MTT's obliteration of the Legislature's explicit differentiation between section 53a and 53b claims.

The COA Decisions, in both the majority opinion and in Judge Griffin's dissenting opinion, correctly rejected the MTT's attempt to limit the types of errors correctable under section 53a to those correctable under section 53b. The majority opinion in the COA Decisions held as follows on this point:

> The MTT also adopted that very narrow interpretation of MCL 211.53a..., declaring that MCL 211.53a is specifically limited in application to those special circumstances relieved under MCL 211.53b. **However, ... such a restrictive interpretation of MCL 211.53a ignores the clear legislative intent not to so limit the types of "mutual mistakes of fact" as evidenced by the omission of such provision. Neither we nor the MTT may engraft such a limitation.** App. at 57a-58a, 72a, 80a. (Emphasis supplied and internal quotations omitted).[22]

Judge Griffin reached the same conclusion in his dissenting opinion in the COA Decisions. App. at 61a, 73a, 81a. ("In construing a statute, the omission of a provision in one statute included in another statute is presumed intentional.")

As noted, International Place Apts addressed the meaning of the term "clerical error," not the term "mutual mistake of fact." In limiting "mutual mistakes of fact" correctable under section 53a to "clerical errors" found correctable in International Place Apts under section 53b, the MTT also equates "mutual mistakes of fact" and "clerical errors," thereby limiting

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[22] It should be noted that Judge Cavanagh authored the majority opinion in the COA Decisions. He also joined in the Court of Appeals opinion in International Place Apts. His conclusion that the limited types of clerical error found correctable under section 53b in International Place Apts does not apply to mutual mistakes of fact correctable under section 53a is, thus, obviously thoughtful and well-considered.

correctable "mutual mistakes of fact" to those that are merely of a "clerical error" nature. That is improper. The legal definition of "mutual mistake of fact" is much broader than that of "clerical error." App. at 55a, 69a, 77a. (The majority opinion in the COA Decisions stating the Black's Law Dictionary definition of "mutual mistake of fact" as "a shared or common error, misconception, or erroneous belief as to a material fact."); International Place Apts at 109 (quoting the Black's Law Dictionary definition of "clerical error" as "a mistake in writing or copying"). As Judge Griffin correctly stated in his dissenting opinion in the COA Decisions:

> *Int'l Place Apartments – IV* dealt solely with a claimed clerical error [and] neither mentioned MCL 211.53a nor involved a mutual mistake of fact. Therefore, any reliance on that case in determining the meaning of mutual mistake of fact in MCL 211.53a is inappropriate. App. at 61a, 73a, 81a.[23]

The MTT believes that the *pari materia* statutory construction principle justifies its attempt to impose section 53b limitations on section 53a. See General Products (Exhibit B, p 21) (Quoting from Michigan Bell Telephone Co v Dep't of Treasury, 229 Mich App 200, 216; 581 NW2d 770 (1998) ("It is a well-accepted rule of statutory construction that the terms of statutory provisions having a common purpose should be read in *pari materia*.")) While section 53a and section 53b have the common purpose of providing relief for mutual mistakes of fact and clerical

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[23] Equating "mutual mistake of fact" and "clerical error" also improperly renders one of the terms surplusage or nugatory. See Altman v Meredian Twp, 439 Mich 623, 635; 487 NW2d 155 (1992) (Courts should reject a construction of a statute that renders any part of it surplusage or nugatory). The two terms have different meanings which the Legislature intended to apply.

As indicated above, an inadvertent excess personal property tax assessment and payment is invariably the result of incorrect preparation of the personal property statement by the taxpayer. The only other possible cause of an inadvertent excess personal property tax assessment and payment is a typographical, transpositional or mathematical error made by the assessing officer. Accordingly, denying section 53a relief in the case of incorrectly prepared personal property statements limits section 53a relief to the type of errors correctable under section 53b. This is an incorrect legal result, for the reasons discussed above.

errors, they are very different provisions in many respects including, without limitation, the following[24]:

(i) Section 53a applies to any mutual mistake of fact or clerical error without limitation as to type; section 53b applies only to mutual mistakes of fact or clerical errors "relative to the correct assessment figures, the rate of taxation, or the mathematical computation relating to the assessing of taxes." (MCL 211.53b).

(ii) The procedure and forum for section 53a relief is to file suit in the MTT; section 53b claims are brought before and addressed by the local board of review at special sessions in July and December.

(iii) Section 53a only addresses overpayments, and only the taxpayer can seek section 53a relief; section 53b addresses both overpayments and underpayments, and either the taxpayer or the assessing officer can seek section 53b relief.

(iv) A taxpayer can obtain a refund of excess taxes paid within three years before filing a section 53a suit; an overpayment or underpayment can be corrected under section 53b only in the year made or in the following year.

These very significant differences between section 53a and section 53b cannot be obliterated by the MTT, under the *pari materia* principle. The principle can be applied to harmonize different provisions of a statute in order "to give the fullest effect to each provision." Clevenger v Allstate Ins Co, 443 Mich 646, 656; 505 NW2d 553 (1993). It cannot be used, as attempted by the MTT here, to interpret as identical and deprive of full effect clear language differences in different statutory provisions. Moreover, "the interpretive aid of *in pari materia* can only be utilized in a situation where the section of the statute is itself ambiguous." Tyler v Livonia Public Schools, 459 Mich 382, 392; 590 NW2d 560 (1999); People v Threatt, 254 Mich App 504; 657 NW2d 819 (2002). There is no ambiguity or uncertainty about the fact that the

[24] It should also be noted that section 53a was enacted in 1958, while section 53b was enacted in 1967. See MCL 211.53a, Historical and Statutory Notes; MCL 211.53b Historical and Statutory Notes.

language of section 53b limits the errors correctable thereunder to those "relative to the correct assessment figures, the rate of taxation, or the mathematical computation relating to the assessing of taxes," MCL 211.53b, while no similar language can be found in section 53a.[25]

Even were the MTT correct that International Place Apts requires errors correctable under section 53a "to be simple and limited in scope," (Exhibit B, p 23), the errors in the present cases qualify for section 53a relief. Ford's mistake here was its incorrect preparation of personal property statements, including reporting of the same property twice. As this Court said in Consumers Power, "one of the simplest mistakes of fact [is the] double, or manifold, payment of the same tax..." Consumers Power at 262 (Smith, J., dissenting). See, also, Carpenter v Ann Arbor, 35 Mich App 608, 611; 192 NW2d 523 (1971).[26] While the Court of Appeals in Wolverine Steel correctly held that errors in preparing a personal property statement are correctable under section 53a, it incorrectly adopted in dicta the MTT's *pari materia* analysis; it therefore obviously considered personal property statement errors as leading to the type of "simple errors of assessment" correctable under section 53b. Wolverine Steel at 674.

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[25] The majority opinion in the COA Decisions correctly rejected the MTT's "use of the in pari materia rule of statutory interpretation." App. at 57a, 72a, 80a. The majority opinion expressed no limitation on the types of mutual mistakes of fact correctable under section 53a. Its denial of relief in the present cases was based upon its erroneous imposition and application of a direct causation criteria, as discussed above.

[26] In Consumers Power, the excess tax was the result of the assessing officer misplacing the decimal point when entering tax data on the assessment roll so that instead of, for example, the proper tax of $32.94 being entered, the erroneous tax of $329.40 was entered. Consumers Power at 251-253 (Smith, J., dissenting). However, there is no indication that the Court believed "mutual mistakes of fact" were limited to such simple errors. If anything, the simplicity of the error there at issue bore only on whether equitable restitution was available in an area (taxation) generally governed solely by statutory or constitutional law. Moreover, as indicated by the language quoted above, Justice Smith obviously regarded double payment of tax (as happened in the present cases) of comparable simplicity to the transpositional error in Consumers Power.

## I. Availability Of An MCL 211.154 Remedy Does Not Preclude A Section 53a Remedy.

The MTT decisions speculated that Ford's claims may be brought under MCL 211.154, and used this speculation as further rationalization for denying Ford's section 53a claims. App. at 27a, 36a, 43a, 50a. The majority opinion in the COA Decisions similarly speculated that "there may be a remedy available under MCL 211.154." App. at 53a, 70a, 78a. MCL 211.154 ("section 154") provides that:

> If the state tax commission determines that property subject to the collection of taxes ... has been incorrectly reported or omitted for any previous year, but not to exceed the current assessment year and two years immediately preceding the date the incorrect reporting or omission was discovered and disclosed to the state tax commission, the state tax commission shall place the corrected assessment value for the appropriate years on the appropriate assessment roll.

MCL 211.154(1).

Any assumption that availability of relief under section 154 justifies denial of relief under section 53a is wrong. Under the plain, ordinary, commonly understood and well established meaning of "mutual mistake of fact" and the other language in section 53a, excessive tax payments resulting from an incorrect personal property statement can be recovered under section 53a. The fact that under some circumstances (not applicable here) a remedy may be available under section 154 does not change the clear remedy provided under section 53a.[27]

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[27] Alternative forms of relief are quite common in the law. See, e.g., Xerox Corp v Detroit, 64 Mich App 159, 162-163; 235 NW2d 173 (1975) (noting non-exclusive, *alternative* jurisdiction of the State Tax Commission and the MTT over claims that may be brought under MCL 211.152 and 211.53). Indeed the MTT itself has previously recognized that a single claim for property tax refund might be brought under alternative statutory sections. See, e.g., Wenona Limited v Bangor Twp, 10 MTTR 907, 909-10 (Docket No. 225488, July 10, 2000) (noting alternative remedies are available "for a refund petition in the Tribunal and the State Tax Commission").

Furthermore, the remedies under sections 53a and 154 are not identical and overlapping as to the basis for relief. In addition, section 53a permits recovery of excessive taxes paid within three years prior to instituting an action under the provision. By contrast, section 154 only permits recovery of excessive taxes paid within two years of institution of an action under the provision. Section 53a actions are brought before the MTT, while section 154 actions are brought before the State Tax Commission. Each such forum has its own procedures and advantages and disadvantages, depending upon the particular circumstances. The Legislature has seen fit to provide these two remedies and forums. There is no legal basis for a court depriving a taxpayer of one because of (the possible) availability of the other.

### J. Ford Should Be Allowed To Amend Its Petition In The Bruce Township Case.

The MTT dismissed Ford's initial Petition in the Bruce Township case solely on the ground that it did not allege a qualifying section 53a claim. App at 26a-27a. The initial Petition incorrectly named the City of Romeo as respondent, when Bruce Township is the proper respondent. App at 17a. The initial Petition also covered five parcels of personal property. App at 18a-19a. After appealing the MTT's dismissal of the Petition, the Court of Appeals remanded the case to the MTT to address the issue of joinder or substitution of parties.

Ford then filed with the MTT a motion to amend and an amended Petition in the Bruce Township case. App at 28a-33a. The amended Petition substituted Bruce Township for the City of Romeo as respondent, and it reduced the number of property parcels from five to two. App at 30a-33a. The MTT permitted the substitution of parties, but denied the motion to amend the Petition and dismissed the case on two grounds. First, the MTT again determined that Ford failed to allege a qualifying section 53a claim. Second, the MTT determined that the amended

Petition was defective because it covered more than one property parcel in violation of the MTT's rules of practice and procedure. App at 35a-36a.[28]

The majority opinion in the COA Decisions, having affirmed the MTT's section 53a holding, affirmed the MTT's denial of Ford's motion to amend the Petition in the Bruce Township case on the ground of futility. App at 58a, 72a, 80a. In his dissenting opinion in the COA Decision in the Bruce Township case, citing this Court's decision in Sands Appliance, supra, Judge Griffin concluded that the MTT committed a reversible abuse of discretion in denying Ford's motion to amend the Petition because there was no particularized reason for doing so, such as (i) undue delay, (ii) bad faith or dilatory tactics, (iii) repeated failures to cure deficiencies in previous amendments, (iv) undue prejudice that would prevent the opposing party from having a fair trial, or (v) futility. App at 64a-65a, 73a, 81a.[29] Judge Griffin suggested that Ford should be allowed to amend the Petition to separate it into two petitions, with each petition covering one property parcel. Id.

Judge Griffin's analysis of this issue is obviously correct. In addition to the points made by Judge Griffin, it is also important to note that the one parcel per-petition requirement is imposed by the MTT's rules of practice and procedure. See TTR 205.1240. It is not a jurisdictional requirement. Moreover, Michigan law favors the meritorious determination of

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[28] The MTT did not raise the multiple parcel issue in respect of the initial Petition in the Bruce Township case, even though it covered five parcels. Nor did the MTT raise the issue in respect of the Petitions involving the other two Appellees, which also covered multiple property parcels. The MTT has taken all the way to judgment other cases involving multiple parcels covered by a single petition and docket number. See, e.g., Lionel Trains, Inc v Chesterfield Twp, 9 MTT 315 (2001); aff'd 225 Mich App 350 (1997); IBM Credit Corp v Detroit, 7 MTT 850 (1993).

[29] Having determined that Ford has a qualifying section 53a claim, Judge Griffin obviously determined that amending the Petition was not futile. Since futility was the only reason the majority opinion in the COA Decision in the Bruce Township case gave for prohibiting amendment of the Petition, the majority opinion presumably would have allowed amendment had it found Ford's section 53a claim to be qualifying.

issues over disposition based on procedural grounds. See, e.g., Levitt v Kacy Mfg Co, 142 Mich App 603, 607; 370 NW2d 4 (1985) ("The policy of this state favors the meritorious determination of issues and encourages the setting aside of defaults."); Walters v Arenac Circuit Judge, 377 Mich 37, 47; 138 NW2d 751 (1966).

The MTT can address, and usually does address, defects in pleading by sending a default letter to the taxpayer, and allowing the taxpayer 21 days to cure the default. See TTR 205.1247. Filing a petition covering multiple parcels is a minor procedural defect that does not merit dismissal – which is "the harshest available sanction." Stevens v Bangor Twp, 150 Mich App 756, 762; 389 NW2d 176 (1986). The MTT has been prohibited from dismissing cases involving repeated, significant procedural violations, compared to the single, minor procedural violation in the Bruce Township case. Id.

The parcels covered by the Petition in the Bruce Township case consist of machinery and equipment located at the same real estate location in the same local taxing jurisdiction. The applicable MTT rule, TTR 205.1240, sets forth a general rule that a petition can cover only one parcel, but provides a number of exceptions allowing a single petition to cover multiple parcels that are more disparate than the parcels in the Bruce Township case. Moreover, even if a separate petition was filed for each parcel in the Bruce Township case, those petitions would normally be consolidated for purposes of efficiency and economy in preparing an appraisal and trying the case. See, e.g., TTR 205.1270(3)(e), (7).

As suggested by Judge Griffin, Ford should be allowed to amend the Petition in the Bruce Township case to separate it into two petitions, with each petition covering one parcel. Alternatively, the Petition should be allowed to stand as to one parcel and the separate application for leave to appeal regarding Bruce Township (Supreme Court No. 127733) currently

held in abeyance by this Court should be granted, with the petition filed by Ford in the MTT in that case being allowed to proceed as to the other parcel. Not allowing the appeal to proceed as to both Bruce Township parcels would be a grossly harsh penalty totally out of proportion to Ford's minor procedural error.

## VI. CONCLUSION AND RELIEF REQUESTED

For each of the many reasons discussed above, the majority opinion in the COA Decisions clearly constitutes error of law and application of wrong legal principles. Ford respectfully requests that this Honorable Court enter an Order determining that Ford is entitled to relief under section 53a with respect to all the properties for which Ford seeks relief, REVERSING the majority opinion in the COA Decisions, and REMANDING the cases to the MTT for further proceedings consistent with such Order.

Respectfully submitted,

HONIGMAN MILLER SCHWARTZ AND COHN LLP
Attorneys for Petitioner-Appellant

By: Jeffrey A. Hyman

John D. Pirich (P23204)
Jeffrey A. Hyman (P33490)
Michael B. Shapiro (P20282)
Daniel L. Stanley (P57052)
Attorneys for Petitioner-Appellant
222 North Washington Square, Suite 400
Lansing, MI 48933
(517) 377-0712
(313) 465-7422

Dated: December 14, 2005

# EXHIBIT

# A

Michigan Department of Treasury
632 (Rev. 10-04)

Parcel No.

L-4175 **2005**

# 2005 Personal Property Statement (As of 12-31-04)

**FROM:** (Name and Address of Assessor)

**TO:** (Name and Address of Taxpayer)

**Please file by February 1, 2005.*** Read instructions carefully. Additional notices are found in the instructions. Form approved by STC on 9-28-04. Issued under authority of P.A. 206 of 1893.

Location(s) of Personal Property Reported on This Statement. LIST ALL LOCATIONS. Attach additional sheets if necessary.

| Date of Organization | Date Business Began at above location |
|---|---|

Assumed Names Used by Legal Entity, if any

Names of Owner(s) or Partners (If sole proprietorship or partnership)

If Sole Proprietorship, Taxpayer's Residential Address

Legal Name of Taxpayer

Address Where Personal Property Records are Kept

| Name of Person in Charge of Records | Taxpayer Telephone No. |
|---|---|

Description of Taxpayer's Business Activity

| Square Feet Occupied | Michigan Sales Tax No. |
|---|---|
| Preparer's Name, Address and Telephone Number | |

Check One Only:
- ☐ Sole Proprietorship
- ☐ Partnership
- ☐ Limited Liability Co. MI ID# _____
- ☐ Corporation MI ID# _____

## SUMMARY AND CERTIFICATION. Complete ALL questions.

| | | | |
|---|---|---|---|
| 1. Have you excluded any exempt "Special Tools" from this statement? | ☐ Yes | ☐ No | If Yes, state total original cost excluded _____ |
| 2. Have you excluded any air and water pollution control facilities and/or wind or water energy conversion devices for which an exemption certificate has been issued? | ☐ Yes | ☐ No | If Yes, attach itemized list. |
| 3. Have you, to the best of your knowledge, reported all of your assessable tangible personal property located in Michigan to the appropriate assessment jurisdiction? | ☐ Yes | ☐ No | If No, attach explanation. |
| 4. Did you hold a legal or equitable interest in personal property assessable in this jurisdiction which you have not reported on this statement (see instructions)? | ☐ Yes | ☐ No | If Yes, attach itemized list. |
| 5. Are you a party (as either a landlord or a tenant) to a rental or lease agreement relating to real property in this jurisdiction? | ☐ Yes | ☐ No | If Yes, complete Section O. |
| 6. Have any of your assets been subjected to "rebooking" of costs for accounting purposes or been purchased used (see instructions)? | ☐ Yes | ☐ No | If Yes, attach itemized list. |
| 7. Is any of your property "daily rental property," per P.A. 537 of 1998? | ☐ Yes | ☐ No | If Yes, attach Form 3595. |
| 8. Have you reported all fully depreciated or expensed assets that are assessable? | ☐ Yes | ☐ No | |
| 9. Are other businesses operated at your location(s)? | ☐ Yes | ☐ No | If Yes, attach itemized list. |

Enter zero if appropriate.

| | | | | Assessor Calculations |
|---|---|---|---|---|
| 10. Grand total from page 2 | 10a. | 0 | | 10b. 0 |
| 11. Grand total from page 3 | 11a. | 0 | | 11b. 0 |
| 12. Grand total from page 4 | 12a. | 0 | | 12b. 0 |
| 13. Total cost of Idle Equipment from Form 2698 | 13a. | | | 13b. |
| 14. Total cost of Personal Property Construction in Progress | 14a. | | X .50 | 14b. 0 |
| 15. Total cost of Cable Television and Utility Assets from Form 3589 | 15a. | | | 15b. |
| TOTAL | | 0 | | |

**ASSESSOR'S ADJUSTMENT(S)** .....
**EXEMPTION(S)** .....
**TRUE CASH VALUE** .....
**ASSESSED VALUE (50% of TCV)** .....

The undersigned certifies that he/she is an owner, officer and/or the duly authorized agent for the above named taxpayer and that the above summary, with its supporting documents, provides a full and true statement of all tangible personal property owned or held by the taxpayer at the locations listed above on December 31, 2004.

| Signature of Certifier | Date |
|---|---|
| | |

## INSTRUCTIONS. Read carefully to obtain directions for the allocation of your personal property to Sections A - N.

All Tangible Personal Property in your possession at this location, including fully depreciated and expensed assets, must be reported in one of the Sections A through N. If you had "Move-Ins" of used property, you must also complete Form 3966. "Move-Ins" are items of assessable personal property (hereafter referred to as "property") that were not assessed in this city or township in 2004, including (1) purchases of used property, (2) used property you moved in from a location outside this city or township, (3) property that was exempt in 2004 (such as exempt Industrial Facilities Tax property), and (4) property that you mistakenly omitted from your statement in 2004. "Move-Ins" DO NOT include property that has been moved from another location WITHIN this city or township or that was assessed to another taxpayer within this city or township in 2004 (i.e., property reported by a previous owner or previously leased property reported by the lessor in 2004). All "Move-Ins" must be reported on this page 2 and on Form 3966. Do not report 2004 acquisitions of new property on Form 3966.

Did you have "move-ins"? ☐ Yes ☐ No

| **SECTION A:** Including Furniture and Fixtures | | | Assessor Calculations |
|---|---|---|---|
| 2004 | | .91 | 0 |
| 2003 | | .80 | 0 |
| 2002 | | .69 | 0 |
| 2001 | | .61 | 0 |
| 2000 | | .53 | 0 |
| 1999 | | .47 | 0 |
| 1998 | | .42 | 0 |
| 1997 | | .37 | 0 |
| 1996 | | .33 | 0 |
| 1995 | | .29 | 0 |
| 1994 | | .27 | 0 |
| 1993 | | .24 | 0 |
| 1992 | | .22 | 0 |
| 1991 | | .19 | 0 |
| 1990 | | .12 | 0 |
| Prior | | .12 | 0 |
| TOTALS | A1 0 | | A2 0 |

| **SECTION B:** Including Machinery and Equipment | | | Assessor Calculations |
|---|---|---|---|
| 2004 | | .89 | 0 |
| 2003 | | .76 | 0 |
| 2002 | | .67 | 0 |
| 2001 | | .60 | 0 |
| 2000 | | .54 | 0 |
| 1999 | | .49 | 0 |
| 1998 | | .45 | 0 |
| 1997 | | .42 | 0 |
| 1996 | | .38 | 0 |
| 1995 | | .36 | 0 |
| 1994 | | .33 | 0 |
| 1993 | | .31 | 0 |
| 1992 | | .29 | 0 |
| 1991 | | .28 | 0 |
| 1990 | | .23 | 0 |
| Prior | | .23 | 0 |
| TOTALS | B1 0 | | B2 0 |

| **SECTION C:** Including Rental Videotapes and Games | | | Assessor Calculations |
|---|---|---|---|
| 2004 | | .76 | 0 |
| 2003 | | .53 | 0 |
| 2002 | | .29 | 0 |
| 2001 | | .05 | 0 |
| Prior | | .05 | 0 |
| TOTALS | C1 0 | | C2 0 |

**COST GRAND TOTAL** (for page 2)

**TAXPAYER:** Add totals from cost columns of Sections A-F (A1-F1). Enter grand total here and carry to line 10a, page 1.

$ 0

| **SECTION D:** Including Office, Electronic, Video and Testing Equipment | | | Assessor Calculations |
|---|---|---|---|
| 2004 | | .84 | 0 |
| 2003 | | .64 | 0 |
| 2002 | | .55 | 0 |
| 2001 | | .49 | 0 |
| 2000 | | .44 | 0 |
| 1999 | | .41 | 0 |
| 1998 | | .38 | 0 |
| 1997 | | .35 | 0 |
| 1996 | | .33 | 0 |
| 1995 | | .31 | 0 |
| 1994 | | .29 | 0 |
| 1993 | | .28 | 0 |
| 1992 | | .26 | 0 |
| 1991 | | .25 | 0 |
| 1990 | | .17 | 0 |
| Prior | | .17 | 0 |
| TOTALS | D1 0 | | D2 0 |

| **SECTION E:** Including Consumer Coin Operated Equipment | | | Assessor Calculations |
|---|---|---|---|
| 2004 | | .92 | 0 |
| 2003 | | .85 | 0 |
| 2002 | | .77 | 0 |
| 2001 | | .69 | 0 |
| 2000 | | .61 | 0 |
| 1999 | | .54 | 0 |
| 1998 | | .46 | 0 |
| 1997 | | .38 | 0 |
| 1996 | | .30 | 0 |
| 1995 | | .23 | 0 |
| 1994 | | .15 | 0 |
| Prior | | .15 | 0 |
| TOTALS | E1 0 | | E2 0 |

| **SECTION F:** Including Computer Equipment | | | Assessor Calculations |
|---|---|---|---|
| 2004 | | .60 | 0 |
| 2003 | | .44 | 0 |
| 2002 | | .32 | 0 |
| 2001 | | .24 | 0 |
| 2000 | | .19 | 0 |
| 1999 | | .15 | 0 |
| 1998 | | .08 | 0 |
| Prior | | .08 | 0 |
| TOTALS | F1 0 | | F2 0 |

**TRUE CASH VALUE GRAND TOTAL** (for page 2)

**ASSESSOR:** Add True Cash Value totals from Sections A-F (A2-F2). Enter grand total here and carry to line 10b, page 1.

$ 0

Parcel No.

## SECTION G - Other Assessable Personal Property Which You Own

Assessable Tangible Personal Property in your possession that is not entitled to depreciation under Generally Accepted Accounting Principals (GAAP) (e.g. fine art) or that the assessor has told you to report in this section or that is otherwise described in the instructions should be reported under this section. Any Personal Property reported in this section should not be reported elsewhere on Form L-4175. See instructions. Attach additional sheets, if necessary.

| Description of Property | Acquisition Cost New | Acquisition Year | True Cash Value Assessor's Calculations |
|---|---|---|---|
| | | | |
| | | | |
| | | | |
| **Total Acquisition Cost New** | G1 0 | | G2 0 |

## SECTION H - Standard Tooling

You must report your standard tooling in this Section. Complete both columns. Notice that GAAP (Generally Accepted Accounting Principals) net book value, as reported in this section, must implement accounting "changes in estimate", even if not otherwise material. Any Personal Property reported in this section should not be reported elsewhere on Form L-4175. See Instructions.

| Acquisition Year | Acquisition Cost New | GAAP Net Book Value |
|---|---|---|
| 2004 | | |
| 2003 | | |
| 2002 | | |
| Prior | | |
| **Total Acquisition Cost** | H1 0 | H2 0 |

## SECTION I - Qualified Personal Property

INCLUDE ONLY "Qualified Personal Property" as defined by Michigan Compiled Laws 211.8a (6)(c). See instructions. Attach extra schedules, if necessary, following the same format as below. Any Personal Property reported in this section should not be reported elsewhere on Form L-4175.

| Description of Equipment and Model or Serial Number | Owner Name and Complete Mailing Address | Original Cost Installed | Date of Installation | Lease Term In Months | Year of Manufacture | Total Average Monthly Rental | % | TCV to be Completed by Assessor |
|---|---|---|---|---|---|---|---|---|
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
| **Total Installed Cost** | I1 0 | | | | | | | I2 0 |

## SECTION J - Leased Property in Your Possession Which Is Not Qualified Personal Property

Property you are leasing from another person or entity should be reported under this section. "Qualified" Personal Property should be reported under Section I. See instructions. Attach additional sheets if necessary. Any Personal Property reported in this section should not be reported elsewhere on Form L-4175.

| Lease No. | Name & Address of Lessor | Description of Equipment | Lease Term (in months) | Monthly Rental | 1st Year in Service | Selling Price New (estimate, if necessary) |
|---|---|---|---|---|---|---|
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | **Total Selling Price New** | J1 0 |

## SECTION K - Other Personal Property in Your Possession Which You Do Not Own

Property not owned by you but in your possession on December 31, 2004 under arrangements other than a lease agreement should be reported under this section. See instructions. Any Personal Property reported in this section should not be reported elsewhere on Form L-4175. Attach additional sheets if necessary.

| Name & Address of Owner | Description of Equipment | Age (estimate if necessary) | Selling Price New (estimate, if necessary) |
|---|---|---|---|
| | | | |
| | | | |
| | | | |
| | | **Total Selling Price New** | K1 0 |

## COST GRAND TOTAL (for page 3)

**TAXPAYER:** Add Total Costs and Selling Prices from Sections G-K (G1-K1). Enter grand total here and carry to line 11a, page 1.

$ 0

## TRUE CASH VALUE GRAND TOTAL (for page 3)

**ASSESSOR:** Add True Cash Value totals from Sections G-I (G2-I2). Enter grand total here and carry to line 11b, page 1.

$ 0

## SECTION L - Detail of Leases (This Section is Completed by Leasing Companies)

Equipment that you lease to others should be reported under this section. Notice: You must also complete Sections A - F on Page 2. See instructions. You may use attachments in lieu of completing this section if the attachments contain the information requested below, in the same format, and if you complete the Tables on Page 2. Attach additional sheets, if necessary.

Are you a manufacturer of equipment? ☐ Yes ☐ No

| Lease No. | Name & Address of Lessee | Location of Equipment | Type of Equipment | Lease Period (Mo.) | Monthly Rental | 1st Year in Service | Manufacturer Cost | Original Selling Price |
|---|---|---|---|---|---|---|---|---|
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |

**Total Original Selling Price** 0

## SECTION M - Leasehold Improvements

All Leasehold Improvements made at your place of business should be reported under this section, even if you believe that the improvements are not subject to assessment as Personal Property. Provide as much detail as possible so that the assessor can determine whether an assessment should be made. You may attach additional explanation and/or copies of "fixed asset" records, if the documents attached provide all of the information requested below and if you insert the total original cost in "Total Cost Incurred" below. Trade fixtures and installation costs of machinery and equipment must be reported in Sections A through I. See instructions. Any Personal Property reported in this section should not be reported elsewhere on Form L-4175.

| Year Installed | Description (Describe in detail) | Original Cost | STC Multiplier | True Cash Value Assessor's Calculation |
|---|---|---|---|---|
| | | | | |
| | | | | |
| | | | | |
| | **Total Cost Incurred** | **M1** 0 | | **M2** 0 |

## SECTION N - Buildings and Other Structures on Leased or Public Land

Freestanding Communications Towers, Equipment Buildings at Tower sites and Freestanding Billboards must also be reported under this Section. Any Personal Property reported in this section should not be reported elsewhere on Form L-4175. Attach additional sheets, if necessary.

☐ Check this box if you believe that these structures are already assessed as part of the real property.

| Address or Location of Building | Year Originally Built | Total Capitalized Cost | True Cash Value Assessor's Calculation * |
|---|---|---|---|
| | | | |
| | | | |
| | | | |
| | **Total Capitalized Cost** | **N1** 0 | **N2** 0 |

## SECTION O - Rental Information. See Instructions. (Attach additional sheets, if necessary.)

**IF YOU ARE THE TENANT**

Name and address of landlord _____

Is your landlord the owner of the property? ☐ Yes ☐ No If you are a sublessee, enter the name and address of the owner of the property _____

**IF YOU ARE THE LANDLORD**

Name and address of tenant _____

Are you the owner of the property? ☐ Yes ☐ No If you are a sublessor, enter the name and address of the owner of the property _____

**TO BE COMPLETED REGARDLESS OF WHETHER YOU ARE THE LANDLORD OR TENANT**

Address of property rented or leased _____

Date that current lease or rental arrangement started _____.

Date current lease will expire, if other than a month to month tenancy _____. Monthly rental $_____

Are there options to renew the lease? ☐ Yes ☐ No

Expenses (e.g. taxes, electric, gas, etc.) paid by the tenant _____

Square feet of space occupied by the tenant _____

| Assessor Value |
|---|
| **O2** |

### COST GRAND TOTAL (for page 4)

**TAXPAYER:** Add Total Cost Incurred from Section M and Total Capitalized Cost from Section N (M1 and N1). Enter grand total here and carry to line 12a, page 1.

$ 0

### TRUE CASH VALUE GRAND TOTAL (for page 4)

**ASSESSOR:** Add True Cash Value totals from Sections M-O (M2-O2). Enter grand total here and carry to line 12b, page 1.

$ 0

*** Note to Assessor:** Certain buildings and structures on leased land (but not including freestanding signs and billboards) must be assessed on the real property roll. See Bulletin 1 of 2003.

# Instructions for Form L-4175

**NOTICE:** This form is issued under authority of the General Property Tax Act. **Filing is mandatory.** Failure to file may result in imprisonment for a period not less than thirty days, nor more than six months; a fine not less than $100, nor more than $1,000; or both fine and imprisonment at the discretion of the court. See MCL 211.21.

**CAUTION:** Read these instructions carefully before completing the form. **Complete all sections.** Because this form has been coded, it is imperative that it be returned to assure proper processing. If all of the personal property formerly in your possession has been removed from this assessing unit before December 31, 2004, you must notify the assessor at once in order to change the records accordingly. This statement is subject to audit by the State Tax Commission, the Equalization Department or the Assessor. **Failure to file this form by its due date will jeopardize your right to file a Section 154 appeal with the State Tax Commission.** You are advised to make a copy of the completed statement for your records. This form must be filed in the city or township where the personal property is located on December 31, 2004. Do not file this form with the State Tax Commission unless you have been specifically instructed to do so by the Commission's staff.

Although you must complete all sections of this form, you are not required to file pages that do not contain any reported cost. You must, however, insert a zero entry in the appropriate line(s) 10, 11 and/or 12 of the "Summary and Certification" on page 1 to indicate that you have no costs to report for that page; you must complete and file section O if you are a landlord, a lessee or a sub-lessee. In completing this form, you may not use attachments in lieu of completing a section, unless the instructions **specifically** authorize the use of attachments for completing the section.

**FACSIMILE SIGNATURES:** This form must be signed at the bottom of page 1. A facsimile signature may be used (P.A. 267 of 2002), provided that the person using the facsimile signature has filed with the Property tax Division of the Department of Treasury a signed declaration, under oath, using Form 3980. This form can be obtained by writing the Property Tax Division at PO Box 30471 Lansing MI 48909-7971. A facsimile signature is a copy or a reproduction of an original signature.

**GENERAL EXPLANATION:** The Michigan Constitution provides for the assessment of all real and tangible personal property not exempted by law. Tangible personal property is defined as tangible property that is not real estate. Form L-4175 is used for the purpose of obtaining a statement of assessable personal property for use in making a personal property assessment. Michigan law provides that the assessor must send Form L-4175 to any person or entity that may possess assessable personal property. Michigan law also provides that a person or entity receiving Form L-4175 must complete it and return it to the assessor by the statutory due date, even if they have no assessable property to report. If you had assessable personal property in your possession on December 31, 2004, you must submit a completed Form L-4175 to the assessor of the community where the property is located by the statutory due date, even if the assessor does not send you a form to complete.

**COMPLETION OF FORM L-4175**

**Page 1 - Statistical Information:**

**FROM:** Insert name and address of the assessor if you are using a form not provided by the assessor. Often this form must be filed at an address different than the assessor's mailing address for other purposes. It is your responsibility to assure that this form is sent to the correct address. If you are unsure of the mailing address, call your local assessor or county equalization department.

**TO:** If you are not using a preprinted form, insert your name and address. Use the address at which you wish to receive future forms and tax billings. If your form is preprinted with an incorrect address, line out the incorrect portions and write the corrections.

**Parcel No.:** Unless this is an initial filing, you have already been assigned a parcel number. If you are using a form not provided by the assessor, you must insert the correct parcel number. Failure to insert your parcel number may result in a duplicate assessment.

**Square Feet Occupied:** Insert the number of square feet of space occupied by the taxpayer at the location(s) reported.

**Michigan Sales Tax No.:** Insert the taxpayer's Michigan Sales Tax Number.

**Preparer's Name and Address:** Insert the name, address and phone number of the person who has prepared this statement.

**(Check One):** Check the appropriate box indicating the form of legal organization used by the taxpayer in conducting its business. If the taxpayer is organized as a corporation or a limited liability company, insert the Michigan corporate identification number of the business or, if not authorized to do business in Michigan, the name of the state in which it is organized.

**Location(s) of Personal Property...:** List the street addresses of all locations that are being reported on this statement. Locations in different school districts or lying within the boundaries of designated authorities or districts must be reported separately. All locations in the same authority or district must be reported under one account, unless the assessor has directed otherwise. You must file a separate statement for property on which the tax is abated pursuant to P.A. 198 of 1974 (I.F.T.) or P.A. 328 of 1998 (certain new personal property).

**Date of Organization:** Insert the date that the taxpayer's business was first organized or commenced.

**Date Business Began at Above Location:** Insert the date that the taxpayer first commenced business at a location reported on this statement.

**Assumed Names. . . :**State any assumed names used by the taxpayer in conducting its business at the location(s) reported.

**Names of Owners or Partners:** If the taxpayer is a sole proprietorship or a partnership, list the name(s) of the proprietor or partners.

**If Sole Proprietorship, Taxpayer's Residential Address:** Insert sole proprietor's actual residence address. Do not use mailing address, if different than residence address.

**Legal Name of Taxpayer:** Insert the taxpayer's exact legal name.

**Address Where Personal Property Records Are Kept:** Insert the address where the records used to complete this statement are kept. Only insert the address of an agent if that agent has actual possession of **all** documents necessary to conduct an audit.

**Name of Person in Charge of Records:** Insert the name of the person at the address where the records are kept who has actual control of the documents necessary to conduct an audit.

**Telephone No.:** Insert the telephone number of the person having charge of the records used for filing.

**Description of Taxpayer's Business activity:** Insert a descriptive phrase indicating the nature of the taxpayer's business activity.

**Page 1 – Summary and Certification:**

**Page 1, Line 1:** "Special Tools" are exempt from taxation, pursuant to MCL 211.9b. If you are excluding "special tools" from your

statement, you must check "Yes" and insert the amount of original cost excluded. "Special tool" means a finished or unfinished device such as a die, jig, fixture, mold, pattern, special gauge, or similar device, that is used, or is being prepared for use, to manufacture a product and that cannot be used to manufacture another product without substantial modification of the device. As used herein, a "product" can be a part, a special tool, a component, a subassembly or completed goods. "Special tools" do not include devices that differ in character from dies, jigs, fixtures, molds, patterns, or special gauges. Machinery or equipment, even if customized, and even if used in conjunction with special tools is not a "special tool." A die, jig, fixture, mold, pattern, gauge, or similar tool that is not a "special tool" is a "standard tool" and must be reported in Section H. Machinery or equipment, even if specialized, and even if used in conjunction with special tools or standard tools is not reported in Section H and must, instead, be reported in Section B. Only industrial tools in the nature of dies, jigs, fixtures, molds, patterns and special gauges can qualify for this exemption. Personal property not directly used to carry out a manufacturing process is not a "special tool." Dies, jigs, fixtures, molds, patterns, special gauges, or similar devices that are not "special tools" should be reported at full acquisition cost new under Section H of this form.

**Page 1, Line 2:** Air and water pollution control facilities and/or wind or water energy conversion devices may qualify for exemption from taxation, only if an exemption certificate has been issued by the State Tax Commission on or before December 31, 2004. If you claim such an exemption, check "Yes" and attach an itemized listing of the certificate numbers, dates of issuance and amounts.

**Page 1, Line 3:** You must file a completed Form L-4175 with the assessor of every Michigan assessment jurisdiction in which you had assessable personal property on December 31, 2004. If you have fulfilled this obligation, check "Yes." If you have not filed in every required jurisdiction, attach an explanation.

**Page 1, Line 4:** The purpose of this question is to determine whether you are a party to a contract relative to personal property located in this jurisdiction on December 31, 2004 that you have not reported on this statement, perhaps because of your belief that another party to the contract is the proper party to report. This includes situations where you believe you hold only a security interest in personal property, in spite of the fact that the contract is labeled a "lease." If you answered "yes" to this question, attach a rider that includes the name(s) of the interest holder(s), the nature of your interest, a description of the equipment, the year the equipment was originally placed in service, its original selling price when new and the address where the property was located on December 31, 2004.

**Page 1, Line 5:** Check "Yes" if you are a lessor (landlord), a lessee (tenant) or a sublessee (subtenant) in a rental contract relating to the real property at this location. MCL 211.8(i) provides that, under some circumstances, the value, if any, of a sub-leasehold estate shall be assessed to the lessee. If you check "Yes," complete Section O. Your rental arrangement will be analyzed by the assessor. If you check "Yes" and have made leasehold improvements to the real estate, you must also complete Section M. Your completion of Sections M and O will not necessarily result in an increased assessment.

**Page 1, Line 6:** The valuation multipliers contained in Sections A through F on page 2 are intended to be applied to the acquisition cost of new, not used, personal property. If the acquisition cost new of an asset is known to you or can be reasonably ascertained through investigation, you must report that cost in the year it was new when you complete Sections A through F, even if you have adjusted the cost in your accounting records to reflect revaluation of the asset using a "purchase," "push-down" or similar accounting methodology, or even if your booked cost reflects a "used" purchase, lease "buy-out" price or a "trade-in" credit. If you were unable to report the acquisition cost new for one or more of your assets, you should check "Yes" and attach a list of all such assets. On the list, provide a detailed description of each asset, the year or approximate year that the asset was new, and the amount and acquisition year at which you have reported the asset. You must also provide a written explanation of the reason(s) that the original acquisition cost information is not available.

**Page 1, Line 7:** "Daily rental property" is tangible personal property, having a cost **new** of $10,000 or less, that is exclusively offered for rental, pursuant to a written agreement, on an hourly, daily, weekly or monthly basis for a term of 6 months or less (including all permitted or required extensions). If you acquired the property "used" you must determine the cost new for purposes of determining whether the property qualifies for "daily rental property" treatment. If you believe that you have such property, see Form 3595, *Property Statement - Daily Rental Property*, for additional information. If you qualify, you must complete Form 3595 and comply with the requirements set forth therein.

**Page 1, Line 8:** You are required to report all tangible personal property in your possession in this location **even if the property has been fully expensed or depreciated for federal income tax or financial accounting purposes**. If you answer "No," attach a detailed explanation.

**Page 1, Line 9:** This question requires you to disclose other businesses that share space with you at the location(s) of your business. If you answer "Yes" attach a list of all other businesses operating at your location(s). If you are located in a shopping center, office building or other multi-tenant facility, you are not required to list businesses having a different legal address.

**Page 1, Line 10:** Complete Sections A through F, page 2, and add the totals from Sections A through F to arrive at a Cost Grand Total. Insert the Cost Grand Total in the box indicated at the bottom of page 2 and carry that amount to page 1, line 10a.

**Page 1, Line 11:** Complete Sections G through K, page 3, and add the totals from Sections G through K to arrive at a Cost Grand Total. Insert the Cost Grand Total in the box indicated at the bottom of page 3 and carry the amount to page 1, line 11a.

**Page 1, Line 12:** Complete sections L through O, page 4, and add the totals from sections M and N to arrive at a Cost Grand Total, as directed by the instruction at the bottom of the page. Insert the Cost Grand Total in the box indicated at the bottom of page 4 and carry the amount to page 1, line 12a.

**Page 1, Line 13:** If you had assets that qualified as "idle equipment" or as "obsolete or surplus equipment" on December 31, 2004, complete Form 2698, *Idle, Obsolete and Surplus Equipment*, and carry the Total Original Cost from Form 2698 to line 13a.

"Idle equipment" is equipment that has been disconnected and is stored in a separate location. Assets are **not** "idle" if they are present as standby equipment, are used intermittently or are used on a seasonal basis. "Obsolete or surplus equipment" is equipment that either requires rebuilding and is in the possession of a rebuilding firm on December 31, 2004 **OR** is being disposed of by means of an advertised sale because it has been declared as surplus by an owner who has abandoned a process or plant. For more information, see instructions to Form 2698. Do not include these assets elsewhere on this form.

**Page 1, Line 14:** Report the total cost incurred for Construction in Progress, as calculated on an accrual basis, based on the extent of physical presence of the construction in progress in the assessment jurisdiction. Construction in Progress is property of a personal property nature that has never been in service and was in the process of being installed on December 31, 2004. Do not report partially constructed electric generating facilities as Construction in Progress. Such facilities must be reported on Form 2870, *Real Property Statement*.

**Page 1, Line 15:** If you had cable television or utility assets on December 31, 2004, complete Form 3589, *Cable Television and Public Utility Personal Property Report*, and carry the Total Original Cost from Form 3589 to line 15a. See the instructions to Form 3589.

**Page 2 - General Instructions for Sections A through F:**

You must report in these Sections the full acquisition cost new, in the year of its acquisition new, of all machinery and equipment, computer equipment, furniture and fixtures, signs, coin operated equipment, office equipment, electronic, video and testing equipment, rental video tapes and games and other tangible personal property owned by you and located in this assessment jurisdiction, **even if you have fully depreciated the asset or have expensed the asset under Section 179 of the Internal Revenue Code or under your accounting policies. All costs reported must include freight, sales tax and installation.** Capitalized expenditures made to a piece of machinery or equipment after the initial acquisition year must be reported in the year the expenditure is booked as a fixed asset. These costs must be reported the same as they are shown on your financial accounting fixed asset records, assuming that you account using generally accepted accounting principles. You must also report in these sections any other tangible personal property in your possession or under your control in this jurisdiction that is not reported under sections G through N. If you purchased an asset used, and do not know and cannot ascertain the acquisition cost new, attach the list required by the page 1, line 6 instructions. The acquisition costs for the assets reported under each section must be totaled for each acquisition year. Place the yearly total on the line of the section corresponding to the year that the property was acquired. You must report the original acquisition cost, **not** your estimation of the value of the property. Equipment not fully installed on December 31, 2004 should be reported on page 1, line 14 and should not be reported in these sections. Property that was reported as construction in progress **last** year but which was placed in service on or before December 31, 2004 should be entirely reported on the 2004 acquisition line of the appropriate table, not the 2003 line. Similarly, the cost of all assets must be reported as acquired in the year that they were placed in service, rather than the year of purchase, if those years differ.

Leased assets and "daily rental property" must be reported by the **Owner** on sections A through H in the same manner as other property. An itemized listing of the property must also be made in section L (for leased assets) or pursuant to the requirements of the instructions for page 1, line 7 (for daily rental assets).

All leased and daily rental assets must be reported by, and must be assessed to, the owner, in spite of any agreement to the contrary between the parties to the lease or rental agreement, unless the property is "qualified personal property" or is owned by a bank. Leased and rental property must be reported at selling price new, even if the owner is the manufacturer of the asset or acquired the asset in the wholesale market for an amount less than the price that the end-user would have incurred to purchase the asset. If the asset is of a type that it is never sold to an end-user or if you have constructed the asset for your own use, report the price at which the asset would sell if a market sale did occur. See STC Bulletin 1 of 1999.

The cost reported in each of the sections of this form and on the forms used with this form should include the full invoiced cost, without deduction for the value of certain inducements such as service agreements and warranties when these inducements are regularly provided without additional charge.

Inventory is exempt from assessment. Inventory does not include personal property under lease or principally intended for lease or rental, rather than sale. Property allowed a cost recovery allowance or depreciation under the Internal Revenue Code is not inventory. Motor vehicles registered with the Michigan Secretary of State on December 31, 2004 are exempt. Nonregistered motor vehicles and equipment attached to motor vehicles which is not used while the vehicle travels on the highway are assessable. Computer software, if the purchase was evidenced by a separate invoice amount and if the software is commonly sold separately, is exempt.

If you have had "Move Ins" of used property during calendar year 2004, you must complete Form 3966, in addition to completing Form L-4175. You can obtain Form 3966 from the Michigan Department of Treasury Web Site at **www.michigan.gov/treasury** or from your local assessor. "Move-Ins" are items of assessable personal property that were not assessed in this city or township in 2004, including: acquisitions of previously used personal property (which should be reported in the year it was new and at the cost when new); used personal property you have moved in from outside this city or township; personal property that was exempt in 2004 (such as exempt industrial facilities tax property); and personal property that you mistakenly omitted from your statement in 2004. "Move-Ins" **do not include** property moved from another location **within** this city or township or assessed to another taxpayer **within** this city or township in 2004 (i.e. property reported by a previous owner or previously leased property reported by the lessor to this city or township last year). All "Move-Ins" must be reported in the appropriate section of Form L-4175, in addition to being reported on Form 3966. **Do not report** 2004 acquisitions of new property on Form 3966.

You must report the cost of business trade fixtures in the appropriate section, A through F, rather than in section M where you report leasehold improvements. You must also report the costs of installing personal property in the appropriate section, A through F. Trade fixtures and installation costs of machinery and equipment must not be reported in section M, even if you have booked them as leasehold improvements for financial accounting purposes. Trade fixtures are items of property that have been physically attached to real estate by a tenant to facilitate the tenant's use of the property for business purposes and which are both capable of being removed and are removable by the tenant under the terms of the lease. Examples of trade fixtures are certain costs related to telephone and security systems and most signs. Examples of installation costs are the costs of machine foundations and electric, water, gas and pneumatic connections for individual manufacturing machines.

The costs of an electrical generating facility, including the costs of all attached equipment that is integrated as a component in accomplishing the generating process, such as boilers, gas turbines and generators, are not reported on this form. An exception is a small, movable generating unit that has a fixed undercarriage designed to allow easy movement of the unit from

place to place to provide temporary electric power. The costs associated with a generating facility that does not have a fixed undercarriage must be reported to the assessor on Form 2870, *Real Property Statement*. The costs associated with small, movable electrical generation units that have a fixed undercarriage and the costs associated with other unattached, movable machinery and equipment used at generating facilities, such as front loaders, forklifts, etc. are reported in section B of this form.

A summary of the items that should be reported in each section is provided below. For full listings, refer to STC Bulletin 12 of 1999 and its later annual supplement(s). These bulletins, along with forms and other bulletins can be accessed via our Web site at **www.michigan.gov/treasury.** MCL 211.19 requires that you complete this form in accordance with the directions on the form and in these instructions. You may, however, attach supplementary material for the assessor to consider in making his or her valuation decisions. If you have questions regarding proper classification, contact your local assessor or the State Tax Commission for clarification.

**Completion of Section A, Page 2:** The assets to be reported in this section include decorations, seating, furniture (for offices, apartments, restaurants, stores and gaming establishments), shelving and racks, lockers, modular office components, cabinets, counters, rent-to-own furnishings, medical exam room furnishings, therapeutic medical beds and bedding, bookcases, displays, mobile office trailers, special use sinks (such as those found in medical offices, beauty shops and restaurants), tables, nonelectronic recreational equipment, filing systems, slat walls, non-freestanding signs, window treatments, uniforms and linens, cooking, baking and eating implements, shopping carts, booths and bars. Other assets may be included at a later time.

**Completion of Section B, Page 2:** The assets to be reported in this section include all assets that are not designated for disclosure in another section. Specifically, such assets include the following types of machinery and equipment: air compressors, airport ground, non-coin operated amusement rides and devices, auto repair & maintenance, beauty and barber shop, boiler, furnace, bottling & canning, crane and hoist, car wash, chemical processing, construction, unlicensed vehicular, conveyor, non-coin operated dry cleaning and laundry, air makeup and exhaust systems, manufacturing and fabricating, food processing, gym & exercise, heat treating, landscaping, sawmill, incinerators, maintenance and janitorial, nonelectronic medical and dental and laboratory and veterinary equipment, mining and quarrying, mortuary & cemetery, painting, hydrocarbon refining and production and distribution, plastics, pottery & ceramics, printing and newspaper, rubber manufacturing, scales, ski lifts, smelting, stone & clay processing, supermarket, textile, tanning, vehicle mounted, waste containers, wire product manufacturing, woodworking, automated tellers (ATM), computer controlled lighting, CNC controlled manufacturing, theater equipment, restaurant food preparation and dispensing and storing and serving equipment, soft drink fountains, coin counters, beverage container return machines, storage tanks, hand tools of mechanics and trades, nonregistered motor vehicles, freestanding and other safes not assessed as real property, oil and gas field equipment and gathering lines prior to commingling product with other wells, portable toilets, metal shipping pallets and containers, portable saw mills, LP tanks under 2,000 gallons, fuel dispensing control consoles, computer-controlled printing presses, stereo lithography apparatus, forklift trucks, non-coin operated gaming apparatus and computerized and mechanical handling equipment. Other assets may be included at a later time.

**Completion of Section C, Page 2:** Report the acquisition cost new and the year of acquisition of rental videotapes, rental video games, rental DVD's and rental laser disks owned by you at this location. Other assets may be included at a later time.

**Completion of Section D, Page 2:** The assets to be reported in this section include office machines, non-computerized cash registers, copiers (including digital copiers/document processing devices), faxes, mailing and binding equipment, photography and developing equipment, shredders, projectors, telephone and switchboard systems, audio and video equipment (used for receiving, transmitting, recording, producing and broadcasting), amplifiers, CD, cassette and disc players, speakers, cable television local origination equipment, electronic scales, surveillance equipment, electronic diagnostic and testing equipment (for automotive shops, medical offices, hospitals and dental offices), ophthalmology testing equipment, satellite dishes, video-screen arcade games, electronic testing equipment, electronic laboratory equipment, cellular transmitter site equipment (except towers and land improvements and items reported under other sections of this form - see STC Bulletin 3 of 2000), cellular telephones, medical laser equipment, reverse osmosis and hemodialysis systems, movable dynamometer, spectrum analyzer, security systems, 2-way and mobile land radio equipment, pay-per-view systems, wooden and plastic pallets and shipping containers, rental musical instruments and distributive control systems (see STC Bulletin 3 of 2000). Other assets may be included at a later time.

**Completion of Section E, Page 2:** The assets to be reported in this section include consumer coin-operated equipment such as bill & change machines, juke boxes, pin ball machines, coin-operated pool tables and other non-video arcade games, snack & beverage machines, other vending machines, news boxes, laundry equipment, coin operated telephones and slot machines. Other assets may be included at a later time.

**Completion of Section F, Page 2:** The assets to be reported in this section include assessable software, personal and midrange and mainframe computer and peripheral equipment, including servers, data storage devices, CPUs, input devices such as scanners and keyboards, output devices such as printers and plotters, monitors, networking equipment, computerized point of sale terminals, global positioning system equipment, lottery ticket terminals, gambling tote equipment, pager instruments, and cable television converters. Do not report digital copiers in this section even if the equipment can also be used as a computer peripheral.

A programmable logic control device for a machine should be reported in section B with the machine it serves. Other assets may be included at a later time.

**Cost Grand Total, Page 2:** After you have completed sections A through F, add together the totals of cells A1 through F1 to arrive at a Cost Grand Total. Insert the Cost Grand Total in the box indicated at the bottom of page 2 and carry to page 1, line 10a.

**Section G , Page 3:** Report all nonexempt tangible personal property owned by you at this location that is not entitled to depreciation/cost recovery under the United States Internal Revenue Code **or** that the assessor has told you to report in this section **or** that otherwise presents special valuation problems. An example of property not entitled to depreciation/cost recovery is fine art. Examples of properties that represent special valuation problems are: frequently supplemented professional books, wind turbine generators, feature motion picture films, audio and video productions not sold to the public at large, musical instruments used for professional performance, LP tanks of 2,000 gallons or more that have not been

assessed as real property, and toll bridge company structures. Provide all requested information. An inspection of the property may be necessary. Property reported in this section should not be reported elsewhere on this form.

**Section H, Page 3:** Standard tools, dies, jigs, fixtures, molds, patterns and gauges and other manufacturing requisites of a similar nature (commonly referred to as "tooling") will be valued at an amount equal to the net book value of the asset. Report both Acquisition Cost New and GAAP net book value by year of acquisition in this section. See the instructions for line 1 for information regarding the tooling that is assessable. For purposes of personal property reporting, net book value shall be as determined using generally accepted accounting principles, in a manner consistent with the taxpayer's established methods of depreciation. The net book value for federal income tax purposes shall not be used for purposes of personal property tax reporting. If an accounting change in estimate is indicated relating to a particular asset, the net book value of that asset, as reported for personal property assessment purposes, shall be the value that would have existed for that asset on December 31, 2004 if a correct estimate had originally been made. Your obligation to implement the change in estimate for personal property reporting purposes shall not be affected by a determination that no financial accounting change in estimate is necessary due to lack of materiality. In no event shall assessable tooling be reported at an amount less than is indicated by its expected remaining useful life plus salvage value (if applicable under the depreciation method used).

**Section I, Page 3:** Report "qualified personal property" in this section. Do not report "qualified personal property" in sections A through F. "Qualified personal property" is property that was made available to you by a "qualified business" (usually a leasing company or a finance company) and which is not assessable to the "qualified business." Such property is assessable to you as the user. The requirements for "qualified business" treatment are strict and many leasing and financing companies do not qualify. Further, such treatment only applies to property subject to an agreement (usually labeled a lease) entered into after December 31, 1993 that qualifies for treatment as "qualified personal property." The "qualified business" is required to have filed a statement with the assessor by February 1st of the current year and is required to have made a written agreement with you in which it is **specifically** agreed that you will report the property to the assessor as "qualified personal property." See MCL 211.8a.

**Section J, Page 3:** Report all business machines, postage meters, machinery, equipment, furniture, fixtures, tools, burglar alarms, signs and advertising devices and other tangible personal property that you are **renting or leasing** from another person or entity. Provide all of the information requested for each lease. You **must** provide the actual or estimated selling price new of the asset so control totals can be generated for use on the Summary and Certification portion of page 1. MCL 211.13 provides that all tangible personal property shall be assessed to the owner thereof, unless the owner is not known. A personal property statement will be sent to the owner. Property reported in this section should not be reported elsewhere on this form.

**Section K, Page 3:** Report all machines, meters, machinery, equipment, furniture, fixtures, tools, signs and advertising devices that are in your possession but are not owned, leased or rented by you. Examples include equipment left with you by vendors, such as display racks, coolers or fountain equipment, property loaned to you by another, property left with you for storage or rebuilding, consigned equipment not held for resale and assets sold but not yet picked up by the purchaser. Provide all of the information requested for each asset. You **must** provide the actual or estimated selling price new of the asset so that control totals can be generated for use on the Summary and Certification portion of page 1. MCL 211.13 provides that all tangible personal property shall be assessed to the owner thereof, unless the owner is not known. A personal property statement will be sent to the owner.

**Cost Grand Total, Page 3:** After you have completed sections G through K, add together the totals of cells G1 through K1 to arrive at a Cost Grand Total. Insert the Cost Grand Total in the box indicated at the bottom of page 3 and carry to line 11a on page 1.

**Section L, Page 4:** This section is to be completed by leasing companies and others who lease personal property to others. In addition to completing this section, you must complete sections A through F and any other sections that are applicable. You may use attachments rather than completing this section, but only if your attachment provides all the information requested on this section and if you insert the total original selling price where required on the form.

**Section M, Page 4:** This section is to be completed by tenants who are renting or leasing real property. All improvements (leasehold improvements) you have made to the real property should be reported, even if you believe that the improvements are not subject to assessment as personal property. Provide as much detail as possible so that the assessor can determine whether an assessment should be made. Coaxial and/or fiber-optic wiring costs and associated infrastructure of audio and/or visual systems serving subscribers of one or more multiple unit dwellings or temporary habitations under common ownership, and which do not use public rights-of-way shall be reported in this section and be clearly identified as such. You may use attachments, but only if your attachment provides all the information requested in this section and if you insert the Total Cost Incurred where required on the form. See the instructions for page 1, line 5 for additional explanation.

**Section N, Page 4:** Report the total capitalized cost and year of construction of buildings and other structures you have placed on leased or on public lands or rights-of-way. Freestanding communications towers, associated equipment buildings and freestanding billboards are examples of other structures that are to be reported. The reported cost must include all costs capitalized on your records. See STC Bulletin 1 of 1999.

**Section O, Page 4:** Landlords and tenants must provide rental information relating to lease arrangements to which they are a party. Do not report lease or rental arrangements relating to property occupied for residential purposes. If you are a landlord with multiple properties, contact the assessor to arrange an acceptable alternative reporting method. See instructions for page 1, line 5.

**Cost Grand Total, Page 4:** After you have completed sections M and N, add together the totals of cells M1 and N1 to arrive at a Cost Grand Total. Insert the Cost Grand Total in the box indicated at the bottom of page 4 and carry to line 12a on page 1.

***NOTE:** MCL 211. 19 states that personal property statements must be completed and delivered on or before February 20 of each year.

# EXHIBIT

# B

2 of 2 DOCUMENTS

General Products Delaware Corporation, Petitioner, v Township of Leoni, Respondent, and Jackson County, Intervening Respondent.

MTT Docket No. 249550 Cross-reference to 236854 (Not Consolidated)

STATE OF MICHIGAN -- MICHIGAN TAX TRIBUNAL

2001 Mich. Tax LEXIS 4

March 8, 2001

[*1]

Tribunal Judge Presiding: Michael A. Stimpson

**OPINION:**

ORDER DESIGNATING DEFINITION OF "MUTUAL MISTAKE OF FACT" AS PRECEDENT

The Michigan Tax Tribunal declares that the attached multiple dispositive Orders entered in this matter on March 8, 2001, dismissing the case for lack of Tribunal jurisdiction pursuant to MCL 211.53a, in which the phrase "mutual mistake of fact" is defined, as that phrase is used in MCL 211.53a (and the companion statute MCL 211.53b), to be PRECEDENTIAL, and is to be PUBLISHED. IT IS SO ORDERED.

Although the property under appeal in the instant matter pertained to a "special tools" exemption, the definitional findings of the precedential Orders are not so limited, being applicable in matters of both real and personal property. The reasoning used in the Orders will be useful on a case-by-case basis in determination of jurisdiction for appeals filed as "mutual mistakes of fact" pursuant to MCL 211.53a (and the companion statute MCL 211.53b under the rule of *pari materia*).

The Tribunal notes that the definition of "clerical error" has already been defined in case law by the Michigan Court of Appeals in International Place Apartments - IV v Ypsilanti [*2] Twp, 216 Mich App 104; 548 NW2d 668 (1996); Iv den. The combination of case law in International Place, and the instant precedential Order, will provide the Tribunal and litigants useful reference in applying the statutory phrase "clerical error or mutual mistake of fact" to the facts of a matter.

Tribunal Judge Presiding

R. Conrad Morrow

**ORDER ONE:** DENYING RESPONDENTS' FIRST REQUEST FOR DISMISSAL PURSUANT TO MCR 2.116(C)(4) AND 2.116(C)(10), PREMISED ON USEFUL LIFE OF SPECIAL TOOLS and **ORDER TWO:** GRANTING RESPONDENTS' SECOND REQUEST FOR DISMISSAL PURSUANT TO MCR 2.116(C)(4) FOR LACK OF TRIBUNAL JURISDICTION, THE SPECIAL TOOLS EXEMPTION CLAIM BEING A MATTER OF LAW, NOT A "MUTUAL MISTAKE OF FACT" UNDER MCL 211.53a and **ORDER THREE:** GRANTING RESPONDENTS' THIRD REQUEST FOR DISMISSAL PURSUANT TO MCR 2.116(C)(4) FOR LACK OF TRIBUNAL JURISDICTION, THE SPECIAL TOOLS CLAIM FAILING TO MEET QUALIFYING CRITERIA FOR RELIEF AS "MUTUAL MISTAKE OF FACT" UNDER MCL 211.53a and **ORDER FOUR:** *SUA SPONTE* DISMISSAL OF PETITIONER'S REMAINING SIX CLAIMS OF MISTAKE FOR LACK OF TRIBUNAL JURISDICTION, THE CLAIMS FAILING TO MEET QUALIFYING CRITERIA FOR RELIEF AS "MUTUAL MISTAKES [*3] OF FACT" UNDER MCL 211.53a and **ORDER FIVE:** SUMMARY FINAL ORDER DISMISSING AND CLOSING CASE ON MTT DOCKET No. 249550 FOR LACK OF JURISDICTION UNDER MCL 211.53a

**I. INTRODUCTION**

**A. Overview of the Order.**

In this matter, for ease of reference, the Tribunal's identification of "Respondents," unless specifically noted otherwise, means both Respondent Leoni Township and Intervening Respondent Jackson County, considered to be acting jointly in accord with an earlier agreed concept of "lead counsel." ("Summary of Status Conference," entered June 4, 1998, para 5).

For purposes of further introductory clarification, it is noted there were two appeals filed by General Products Corporation covering the same six personal property tax items, but only the second of those appeals is the subject matter of this Order. The first appeal filed is a true cash value claim (Docket No. 236854), while the second (Docket No. 249550), applicable to this Order, is a claim of "mutual mistakes of fact" relative to seven areas of "mistake" under MCL 211.53a.

Following this Introduction, a summary of Respondents' "Motion for Partial Summary Disposition" is presented in Part II, Petitioner's [*4] "Response in Opposition" is presented in Part III, with the Tribunal's reasoning, rulings, and orders on the Motion in Part IV. The subject matter of Respondents' Motion is whether Petitioner's "special tools" exemption assertions of "mutual mistake of fact" qualify for processing under MCL 211.53a. The "special tools" exemption is only one of the seven types of "mistake" alleged by Petitioner to have been erroneously reported to, and adopted by, the Township in assessing its personal property. The remaining six claims of "mistake" are addressed in Section V at the Tribunal's own initiative, necessitated by results of the legal research and reasoning issuing from jurisdictional examination of the dispositive motion, and culminating in the Tribunal's *sua sponte* Order of dismissal of those claims. Finally, Part VI provides Summary Orders of dismissal, issued in accord with the findings and rulings of the prior sections, making clear that the sum of all Orders herein result in the closing of the entire "mutual mistakes of fact" case under Docket No. 249550 for lack of jurisdiction under MCL 211.53a.

**B. Background Information on General Products' Two Dockets, Differentiating** [*5] **the Instant § 53a Matter From a Companion Valuation Docket Held in Abeyance.**

**1. Docket No. 236854 On True Cash Value Is In Abeyance.**

The first petition filed was under Docket No. 236854, dated July 1, 1996 (the statutory deadline, June 30, was a Sunday), and concerned the true cash value of six industrial personal property tax items. Those tax items under appeal are: 999-14-07-301-002-04; 999-14-07-301-002-05; 999-14-07-301-002-06; 999-14-07-301-002-07; 900-14-37-600-007-00; and 900-14-37-601-033-07 (corrected in motion to amend for 1997 from typing error in petition). The first tax year appealed was 1996 with an assessment of approximately $ 10.8M total for the six parcels; motions to amend were later granted for tax years 1997 through 2000. That first petition also included a real property parcel (000-14-07-301-002-00) for which, in accord with provisions of the Prehearing Conference of September 19, 1997, Petitioner filed a stipulation on October 23, 1997, to permit withdrawal of that real property parcel. Withdrawal was granted by Tribunal Order of December 12, 1997. Additionally, as further provided in the Prehearing Conference, the first petition (Docket No. 236854, [*6] pertaining to true cash value) was placed in abeyance by Tribunal Order of January 13, 1998, pending resolution of a second petition (Docket No. 249550) pertaining to the same six tax parcels filed pursuant to claims under MCL 211.53a.

As an administrative note, Docket No. 236854 has not been consolidated with the second petition, and is most likely to remain in abeyance pending the final disposition of the instant Docket No. 249550.

**2. Instant Docket No. 249550 Is A § 53a Appeal.**

The second petition in this matter, the instant Docket No. 249550 pertaining to claims of mistake under MCL 211.53a, also being the subject matter of this Order, was filed September 15, 1997. The industrial personal property parcels under appeal were the same six industrial personal property tax parcels as for the earlier petition. The tax years under appeal were the filing year of 1997 plus the three prior years of 1994 through 1996, with an aggregate assessed valuation of approximately $ 43.5M for the four years of the initial filing. Petitioner's filing estimated that about $ 26.9M of assessed value was in controversy, with a resulting overpayment of taxes of $ 720,153. Additionally, motions [*7] to amend were filed and granted for tax years 1998 through 2000.

The instant Docket No. 249550 appeal, as already noted, made seven claims of "mutual mistakes of fact" under MCL 211.53a. The petition's original inclusion of the phrase "clerical errors" was deleted from the claim, as clarified by "Petitioner's Answers to Respondent's First Interrogatories to Petitioner," dated June 1, 1998, Nos. 69- 70 (see copy, Respondents' Motion, Tab B). That the petition pertains solely to mistake is further confirmed by Petitioner's Response

Brief (p 8 bottom - to p 9 top), stating: "General Products does not allege the existence of any clerical errors concerning correction under § 53a."

The petition stated that the incorrect assessments and excessive payment of taxes resulted from multiple "mutual mistakes of fact" that were embodied in an incorrect reporting on the personal property statement and adopted by the assessing officer. The multiple "mutual mistakes of fact" listed in the petition were alleged to consist of: (1) failure to recognize exemption of "special tooling" under MCL 211.9b; (2) the incorrect reflection of the year of acquisition; (3) the erroneous inclusion of property that [*8] had been disposed of; (4) failure to recognize that computer equipment had been misreported as general equipment or furniture; (5) certain application software had been erroneously reported as taxable tangible personal property; (6) certain property had been misidentified as other than Industrial Facilities Tax (IFT) property; and (7) the cost of raw material inventory and building improvements had improperly been included in personal property.

**C. Filing Dates and Scheduling Matters.**

**1. Filing of Motion and Permitted Delay of Response.**

Respondents filed their "Motion for Partial Summary Disposition" on September 25, 1998, concerning "those claims involving the special tools exemption." That motion was accompanied by the filing of another multiplepart motion relating to discovery matters (compelling answers, production of documents, allowing depositions). Shortly thereafter, before responses were due, on October 7, 1998, Petitioner countered with filings of its own multiplepart motions pertaining to requests to strike the three opposing discovery motions, to hold Respondents in default, to strike the dispositive motion, and a request for additional time to respond [*9] to the motion for partial summary disposition (the subject of the instant Order).

In consideration of the flurry of these and other motions having impacted the existing scheduling, the Tribunal's telephonic status conference of October 9, 1998, suspended the outstanding scheduling ("Second Scheduling Order") to permit time for thoughtful evaluation of the procedural and evidentiary issues. The Tribunal granted Petitioner's request for additional time for answering the subject "Motion for Partial Summary Disposition" by also suspending time for response until rulings could first be issued on other related topics. Those verbal instructions and other rulings were followed by the Tribunal's written Orders of October 16, 1998.

Subsequently, the Tribunal addressed part of the backlog of motions in its twelve-order document of May 17, 1999, which included denial of Petitioner's motion to strike the dispositive motion on special tools, and reactivation of the time for Petitioner's response to the special tools partial summary disposition motion. Petitioner's time to respond was established as an item in the "Third Scheduling Order," the required date being set at June 30, 1999. On that date, [*10] "Petitioner's Response in Opposition to Intervening Respondent's Motion for Partial Summary Disposition" on the exempt special tooling issue was timely filed, accompanied by "Petitioner's Brief in Opposition. . . ."

**2. Deferred Ruling On The Motion.**

From May through August 1999, during the general time period in which Petitioner filed its response to the special tools summary disposition motion, the Tribunal received another flurry of motions. These related to matters critical to discovery and the possible hearing, with some concerning complex procedural matters of accountant-client privilege, motions in limine relative to the privilege, waiver/assertion of privilege, and evidentiary rulings on portions of Petitioner's data. These actions were in addition to further motions for dismissal, production of documents, summary disposition, reconsideration or clarification, and immediate consideration. Adding an additional level of complexity to the discovery process and motion work, were Petitioner's repeated references to privilege, to which the Tribunal ordered Petitioner to either assert or waive the accountant-client privilege. Petitioner responded by its "Declaration of Privilege" [*11] on May 19, 1999. Unfortunately, once again the Tribunal found it necessary to suspend scheduling, which it did on August 23, 1999, as confirmed by its Order of that same date.

Following that suspension, as its workload permitted, the Tribunal addressed all outstanding motions except the instant motion on special tools. It was considered essential to first put in order the procedural and evidentiary topics of the other six claims of "mistake" before addressing the dispositive special tools motion. That procedure was deemed appropriate since the ruling on the special tools dispositive motion was the most difficult in that it embodied the need to define "mutual mistake of fact," and that function necessitated extensive legal research and deliberation. Thus, since the tentative direction of the ruling on the dispositive motion had not yet become discernible to the Tribunal, and the probable sequencing of events remained uncertain, the most feasible course was to defer ruling on the special tools motion,

and to give priority to preparation of the case for hearing on the remaining six matters of "mistake." Those procedural steps now having been accomplished, the Tribunal turns to the "Motion [*12] for Partial Summary Disposition" on the "special tools" exemption claim.

## II. RESPONDENTS' MOTION FOR PARTIAL SUMMARY DISPOSITION ON "SPECIAL TOOLS" EXEMPTION CLAIM

### A. Content and Organization of Respondents' Motion.

Respondents' Motion consists of two sections: (1) the Motion and Brief merged, with a cover letter and Proof of Service attached, and (2) the Appendix. The ten page Motion developed its argument around positions related to fact, law, or jurisdictional matters, concluding, at the end of the motion's briefing (p 10, para 7), by referencing the applicable Court Rule, MCR 2.116(C)(4) or (C)(10), as the basis for dismissal of the "special tools" exemption claim. The Appendix to the Motion contained (a) a copy of the petition filed in this matter, dated September 15, 1997; (b) a copy of "Petitioner's Answers to Respondents' First Interrogatories to Petitioner," with attachments; (c) copies of the nine cases referenced by Respondents in their arguments; (d) the eight pages prepared by Petitioner, listing the special tooling for 1994 through 1997 as claimed in the initial petition filed in 1997; (e) excerpt from the State Tax Commission Manual, Chapter 15 on [*13] "Personal Property," pages 15-1 through 15-34.

Respondents' "Motion for Partial Summary Disposition" requests dismissal under the Michigan Court Rules, with the primary request being for lack of jurisdiction, citing three instances under MCR 2.116(C)(4), and an alternative claim of no "material fact" in one instance under MCR 2.116(C)(10). Three different topics are presented as basis for the three dismissal requests, but an alternative request is attached to one of those topics adding MCR 2.116(C)(10) as a secondary "even if the Tribunal had jurisdiction" premise. In Subsection "B" following, the Tribunal has divided Respondents' motion into those three topics. The applicable Court Rules are presented for reference in the next paragraph.

Where the Tribunal Rules do not provide an applicable rule, the Michigan Court Rules govern, as provided by TTR 111(4). In this instance, Tribunal Rules do not specify the bases for all forms of dispositive motions. Accordingly, the excerpted applicable Rules under MCR 2.116 are:

> Rule 2.116 SUMMARY DISPOSITION
>
> (C) Grounds. The motion may be based on one or more of these grounds, and must specify the grounds on which it is based:
>
> * * *
>
> (4) [*14] The court lacks jurisdiction of the subject matter.
>
> * * *
>
> (10) Except as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law.

### B. Summary of Respondents' Requests for Dismissal.

The Motion presents three instances to which the Court Rules for dismissal are applied. The first request for dismissal, summarized in subtopic B-1 following, is a two-aspect argument related to the topic of tool useful life ("utility and amortization"). It primarily uses MCR 2.116(C)(4), "the [Tribunal] lacks jurisdiction," but as an alternative adds MCR 2.116(C)(10), "no genuine issue as to any material fact," under the "even if the Tribunal had jurisdiction" premise. The second and third requests for dismissal, summarized in subtopics B-2 and B-3 following, are each solely based on MCR 2.116(C)(4), "the [Tribunal] lacks jurisdiction," the topics respectively being that an exemption claim is law and does not qualify as a § 53a type, and the other being that mutuality and mistake are not met by Petitioner's claims.

#### 1. Respondents' First Request for Dismissal:

**Either Dismiss** [*15] **Under MCR 2.116(C)(4): Law is in Dispute, Not a Mistake of Fact.**

**- OR -**

**Dismiss Under MCR 2.116(C)(10): Even if Jurisdiction, Undisputed Facts of Long Tooling Runs Precludes Legal Definition of "Special Tools."**

The same argument is the basis for two aspects of a request for dismissal, extending from page 3 of the Motion to mid-page 6 at subtopic 4(d), and resumes with concluding summary on page 10 by referencing citation to Court Rules (C)(4) and (C)(10) of MCR 2.116. The argument common to both dismissal claims pertains primarily to the subject's tooling having a longer life than the State Tax Commission's short-life guideline of three years or less. In support of their position on the three-year life, Respondents cite Chapter 15 of the STC Manual (pp 15-6 and 15-7), which in turn includes citation of MCL 211.9b. The statute defines certain criteria of "special tools," adding that the State Tax Commission (STC) is charged with the full definition. That point, discussed in another context (Motion, p 9, para 6), was noted by Respondents as having been referenced in University Microfilm v Scio Township, 76 Mich App 616; 257 NW2d 265 (1977). Rule 21 was issued [*16] by the STC under authority of the statute, and has been supplemented by seven STC guidelines developed for implementation of Rule 21. The Motion notes that one of the STC guidelines specifies a short life of not more than three years. That short-life guideline is contrasted against Petitioner's Interrogatory Answers 22-24, and a chart attached to the Answers, in which Petitioner indicated a longer useful life ("utility and amortization") for exempt special tools than the three-year criteria. The chart shows 16 of the 21 types of special tools to be at least six years, with three over 12 years, and only one at three years. (Motion, p 5, para 4a).

On the basis of short useful life as one of the defining elements, Respondents conclude that Petitioner is applying "a different test for the special tools exemption than the test described in the State Tax Commission (STC) Manual" (Motion, p 4, para 3b). That difference, according to Respondents' argument, involves both an issue of law and fact, falling under either MCR 2.116(C)(4) or MCR 2.116(C)(10). Since both (C)(4) and (C)(10) claims originate from the same topical argument on length of tool useful life, the Tribunal will jointly consider [*17] the two dismissal aspects under the same argued tool-life status. The two dismissal aspects of this argument are described.

**a. MCR 2.116(C)(4).**

The first aspect is one of taxable status based on Respondents' claim of an issue of law (Motion, p 5, para 5). The law is seen by Respondents as requiring a useful life of three years or less, while Petitioner's apparent legal definition permits much longer "utility and amortization." Since a conclusion is made by applying law to fact, and that "the rule of law is in dispute" (Motion, p 6, para 4d), Petitioner's claim is described by Respondents as an issue of law and not a mistake of fact; that is, a (C)(4) argument ("lacks jurisdiction").

**b. MCR 2.116(C)(10).**

Then, following the (C)(4) request, Respondents turn to an alternative dismissal aspect later in the presentation, employing the same fact argument on tool useful life, but for purposes of making the point, bypassing the jurisdictional question in favor of a focus on a fact issue. Respondents present this second aspect, stating the hypothetical basis: "Even if the Tribunal had jurisdiction, summary [judgment] would be warranted pursuant to MCR 2.116(C)(10), because [*18] there is "no genuine issue as to any material fact." (Motion, p 10, para 7). The (C)(10) claim is based upon the same topic as the (C)(4) claim, that is, the duration of useful life for the tools being in question. Respondents' reasoning is that the longer tool runs admitted by Petitioner are undisputed material facts and, since one of the definitions for "special tools" is that runs be no longer than three years, the facts are that Petitioner's longer tool useful life ("utility and amortization") precludes qualifying the claim. Thus, Respondents argue, as to this material fact there remains "no genuine issue," and dismissal is warranted under (C)(10).

**2. Respondents' Second Request for Dismissal.**

**Dismiss Under MCR 2.116(C)(4): An Exemption or Taxable Status Issue Is a Matter of Law, Not Fact Under a § 53a Claim.**

This MCR 2.116(C)(4) request for dismissal, "the [Tribunal] lacks jurisdiction," is the second such request, but is presented in a different context than already described. The second (C)(4) argues that a "special tools" claim is an exemption topic, and one of law which cannot be raised in a § 53a action. It is argued in the Motion--from page 6, subtopic 4(d), [*19] through page 8, subtopic 4--by reference to case law. Respondents cite three well-known cases pertaining to "mutual mistake of fact," with arguments presented on pages 6 - 7, para 4e of the Motion. The first was Wolverine Steel Co v City of Detroit, 45 Mich App 671; 207 NW2d 194 (1973); lv den. As summarized by Respondents, "the Court held that the taxpayer's exemption issue could not be raised in a § 53a action," that type of claim being

"viewed as a question of law, not fact." The second citation was Upper Peninsula Generating Co v City of Marquette, 18 Mich App 516, 517; 171 NW2d 572 (1969), stating "that a failure to obtain a required voter approval for the tax which had been paid was not a clerical error or mutual mistake of fact." The third case cited was Noll Equipment Co v City of Detroit, 49 Mich App 37, 41-42; 211 NW2d 257 (1973), Iv den, from which Respondents concluded that the "Court of Appeals held that a tax exemption issue was a question of law which could not be raised in a § 53a action."

Respondents concluded (Motion, bottom p 7- top p 8), that on the basis of these three on-point citations to appellate case law, "the issue of taxable [*20] or nontaxable status is a question of law, not a mistake of fact and that § 53a does not apply." In further conclusion, and applicable to all its (C)(4) requests, Respondents state (Motion, p 10, para 7) that dismissal is warranted "because the Tribunal lacks jurisdiction in the absence of a mutual mistake of fact and concerning the special tools claims there is no mutual mistake of fact." Respondents quoted from Fox v University of Michigan Board of Regents, 375 Mich 238, 242; 134 NW2d 146 (1965), in which the Supreme Court held: "When a court is without jurisdiction of the subject matter, any action with respect to such a cause, other than to dismiss it, is absolutely void."

**3. Respondents' Third Request for Dismissal.**

**Dismiss Under MCR 2.116(C)(4): The Criteria for Mutuality of Mistake and Fact Have Not Been Met.**

The third (C)(4) "lacks jurisdiction" count is on the basis that the "mutuality" criteria have not been met relative to "mistake." This portion of the Motion is argued on page 8, para 5 and 6, with the (C)(4) request on the "lacks jurisdiction" dismissal concluding on page 10. Respondents acknowledge that the parties disagree on the mutuality requirement, [*21] and summarized their impression of the key differences. As stated in its response, Petitioner believes "that the state of mind of the parties is not relevant," while Respondents' position "believes that the plain language of the statute requires a mistake in which both parties were mistaken concerning the same fact." (Motion, p 8, para 5).

Respondents cite a Tribunal case to illustrate their understanding of mutual mistake: Smith v South Branch Twp, 3 MTT 308 (1984). In that instance, whether electricity would have been available was found not to be a mutual mistake of fact "because both parties did not have the same fact in mind. . .the relevant fact about electricity was known only to one of the parties." (Motion, p 8, para 5). Another case, relevant to the mutual mistake issue, but used in another context, was discussed in a footnote. (Motion, p 8, n 2). That citation, St. Paul Lutheran Church v Riverview, unpublished opinion per curiam, Court of Appeals, issued December 8, 1994; COA Docket No. 150694, is noted as not being precedentially binding under MCR 7.215(C)(1), but does illustrate an aspect of mutual mistake over whether or not the land was wetlands.

## III. [*22] PETITIONER'S RESPONSE AND BRIEF IN OPPOSITION

### A. Content and Organization of Petitioner's Response.

Petitioner's "Response and Brief in Opposition" is comprised of three organizational sections, being (1) a cover letter; the Response itself, requesting that Respondents' Motion "be denied in its entirety" by entry of an Order; and an attached Proof of Service; (2) a 23-page Brief detailing its arguments of fact, law, and basis for jurisdiction, and referencing sixteen cases in support of its views; and (3) attachments to the Response consisting of (a) a copy of MCL 211.53a; (b) a "Tabulated Personal Property Schedule," listing the seven types of mistakes for which the petition was filed, plus eight pages of listed tooling claimed as exempt for the year of the initial 1997 petition plus the three prior years (1994-1996); (c) the "Affidavit of Barbara Batway," Controller of General Products, dated September 9, 1998, attesting that "a number of mistakes were made in reporting the Company's tangible personal property for ad valorem personal property tax assessment purposes," for which taxes were paid; and (d) a copy of one of the sixteen cases cited.

The first four pages [*23] of the Response presented background and introductory information, such as dates of filing, years of appeal, tax parcels being appealed, and narrative distinguishing the § 53a appeal of the instant Docket No. 249550 from the valuation appeal of Docket No. 236854 being held in abeyance. Some of that information is also found in the Tribunal's "Introduction" of Part I herein. The balance of the Brief, pages 5 through 22, presents Petitioner's arguments, including supporting references to the selected cases. The conclusion, page 23, states: "Applicable case law fully supports General Products' contention that the factual mistake which led to the payment of excess taxes by General Products for misreported special tooling squarely falls within the province of § 53a."

### B. Overview of Petitioner's Arguments for Denial of Summary Disposition.

Petitioner clearly states the basis for its position relative to its claims of mistake, both as the foundation of its initial petition requesting § 53a relief in this matter, and in opposition to Respondents' dispositive motion on special tooling. That position is well-stated on pages 3-4 of the Brief, and sets the introductory tone for its [*24] arguments in opposition:

> A variety of mutual mistakes of fact which General Products contends are subject to plenary correction by this Tribunal; only one concerns us in the context of Respondent's *Motion for Partial Summary Disposition, viz.*, that relating to special tooling. As concerns this category of mistake, General Products, in filing its personal property renditions with Respondent Leoni Township for certain years, mistakenly reported items of special tooling which were not properly reportable as taxable tangible personal property [exhibit references omitted]. Respondent Leoni Township accepted General Products' personal property renditions as filed, and so adopted and incorporated the mistakes set forth on General Products' renditions as its own mistakes in issuing assessments premised upon General Products' erroneous submissions. These mutual mistakes of fact engendered overpayments of personal property taxes to Respondent Leoni Township for the years in which the mistakes were made.
>
> With respect to special tooling (as well as the other categories of tangible personal property to which General Products' § 53a claims are directed). . .General Products submits the following: [*25]
>
> . That the errors relating to special tooling represent the very types of errors which § 53a was conceived to correct;
>
> . That the special tooling errors set forth in General Products' Tabulated Personal Property Schedule (Exhibit B) consist of mistakes of fact in every respect;
>
> . That the "mutuality" requirement evidenced in the language of § 53a is amply made out under the circumstances of this case. . .
>
> . That General Products' Petition accurately identifies MCL 211.53a; MSA 7.97(1) as the lawful and appropriate framework within which General Products may seek recovery of the excess taxes it paid for the years in question.

Having stated its position, Petitioner's arguments in support of denying the Motion are presented in the Brief, pages 5 through 22. Although the various topics are not outlined in a manner which organizationally coincides with Respondents' Motion, the individual points in opposition, in their sum, address the key issues of the Motion. As an overview, the pertinent topics of Petitioner's arguments in rebuttal are that, as to qualifying special tooling eligibility under STC rules, genuine issues of material fact exist relative to MCR 2.116(C)(10); [*26] the mistakes made are those of fact--not law; the mistakes made are mutual; and as to the several claims for dismissal under MCR 2.116(C)(4), the Tribunal has jurisdiction. In the following section, the significant individual points of argument are listed.

**C. Summary of Petitioner's Arguments in Opposition.**

1. Relief under MCL 211.53a is liberal, and without limitation on the type of relief for mistakes of "nature, character, status, or extent of the taxpayer's tangible personal property" under MCL 211.53a. For relief under MCL 211.53a, a petitioner must allege facts that confer jurisdiction on the Tribunal; the mistakes which General Products has alleged qualify for correction and refund of excess taxes. (Response Brief, pp 6-7).

2. A mistake of fact must exist, and no assistance is found in the "clerical error" interpretation of International Place Apartments - IV v Ypsilanti Twp, 216 Mich App 104; 548 NW2d 668 (1996); Iv den. (Response Brief, p 8).

3. The mistake must be one of fact, not law as in Upper Peninsula Generating, and exempt status is an analysis of fact, not law, as understood from Wolverine Steel, and the "broad view of the sweep of § 53a recognized [*27] by the Michigan Court of Appeals" in St. Paul Lutheran. Even if a legal determination is necessary relating to taxable status or character of the property, the actual mistake is one of fact in misreporting the property as assessable (Response Brief pp 9-14).

4. The mistake of fact must be mutual, although, "unfortunately, only sparse discussion in case law delineates what is intended by 'mutuality' in the context of MCL 211.53a; MSA 7.97(1)." Pages 16-20 of the Brief presents Petitioner's

position on mutuality, case law, and discussion of its theories. Included in those citations are several Tribunal cases (Response Brief, pp 16-17), offered as the basis for claiming similar treatment. Particular reliance was placed on Demmer Corp v Delta Corp, unpublished order, MTT Docket No. 228746, entered May 21, 1997; and the published on-record consent judgment in Demmer Corp v City of Lansing, 10 MTT 206 (1998). (Response Brief, pp 20-22).

Petitioner makes further citation to Circuit Court and Court of Appeals cases as examples of mutuality, concluding the position that the Court of Appeals "evidences a relaxed interpretation of a 'mutuality' requirement. . .and that no [*28] reason exists to apply a less flexible 'mutuality' standard in analyzing a taxpayer's § 53a claims." (Response Brief, p 19). Included in Petitioner's discussion was Atkinson v City of Detroit, an unpublished opinion per curiam, Court of Appeals, issued June 25, 1999; COA Docket Nos. 199537 and 199803, in which the Court found the Tribunal to have erred in its interpretation of mutuality. The Court in Atkinson referenced contract law for a definition of mutuality, citing Shell Oil Co v Estate of Kent, 161 Mich 409, 421-422; 411 NW2d 770 (1987). (Response Brief, pp 17-18).

5. Petitioner's application of a "relaxed" and "flexible" standard for mutuality in this case is simply that its personal property statements were in error, and that the assessor's use of that inaccurate information fulfilled the mutuality requirement. That position is repeated in several assertive statements:

> This mistake clearly involves both the taxpayer, which erroneously reported certain items of property, and the assessing officer, who accepted the taxpayer's personal property renditions inclusive of the special tooling mistake contained therein. Moreover, the special tooling mistake [*29] of fact evident here was fully communicated to the assessor, who accepted and expressly relied upon General Products' erroneous personal property renditions in computing the excessive assessments for each affected year. (Response Brief, p 17).

> The mutuality requirement of § 53a is more than adequately met in this case by virtue of the facts that General Products, for each of the years in issue, simply furnished the assessing authority with renditions which contained a mistake in reporting exempt special tooling as assessable and taxable property. This was a mistake relative to the nature, character, status or extent of General Products' property, and Respondent accepted and incorporated these mistakes (in effect adopting them as its own errors) in relying upon General Products' renditions in computing its assessments for the contested parcels. Under these circumstances, the requisite "mutuality" is unmistakably established, so that neither Respondent nor Intervening Respondent may properly claim that General Products is not entitled to the relief requested because it has somehow failed to satisfy the mutuality requirement. (Response Brief, pp 19-20).

6. There are no grounds for [*30] dismissal under (C)(4) for lack of subject matter jurisdiction, based upon arguments presented in the preceding topics. (Response Brief, p 15).

7. Dismissal under (C)(10) for "no genuine issue as to any material fact" is expressly precluded relative to discontinuance of "utility and amortization," in that there exists genuine issues of material fact that require the attention of the trier of fact. General Products is able to demonstrate that its tools fit within Rule 21, and "sufficiently satisfies the unpromulgated" administrative guidelines in that the "three year rule" for special tools is only one of seven STC guidelines, and is "couched in terms of a 'usual expectation' that the tooling would change within three years." (Response Brief, pp 15-16).

8. Petitioner requests the Tribunal deny Respondents' "Motion for Partial Summary Disposition," and permit the matter to proceed to hearing. (Response Brief, p 23).

## IV. TRIBUNAL REASONING, RULING, AND ORDERS ON THE MOTION

### A. Respondents' First Request for Dismissal:

> **Either Dismiss Under MCR 2.116(C)(4): Law is in Dispute, Not a Mistake of Fact.**
>
> **- OR -**
>
> **Dismiss Under MCR 2.116(C)(10): Even if Jurisdiction,** [*31] **Undisputed Facts of Long Tooling Runs Preclude Legal Definition of "Special Tools."**

As described in earlier sections summarizing the Motion and Response, these two claims center about the length of tool useful life necessary to qualify for a "special tools" exemption. Respondents rely on the STC guideline of three years or less not having been met by Petitioner's own admissions of longer life for some of the tooling. Petitioner counters that Rule 21 takes precedence and can be fully met, that the three-year rule is only one of seven guidelines, and that the rule is couched in nonspecific language. The Tribunal finds insufficient basis for dismissal in this first of the three dismissal requests.

Respondents' assumption is that the three-year rule is a rigid criteria which, if not met, then all other criteria are immaterial. In that Petitioner has acknowledged that some tools have a longer useful life, Respondents draw the immediate conclusion that there are no other material facts in dispute, the law is clearly not met, and the matter can be dismissed on both a (C)(4) and a (C)(10) basis. The Tribunal disagrees with that premise. However, before addressing that primary point, [*32] the Tribunal will first address a secondary issue raised by Petitioner in rebuttal that will, in turn, lead back into an understanding of the rejection of Respondents' primary point.

That secondary issue is Petitioner's inference that the seven guidelines (which contain the three-year rule) are some form of unauthorized (the word used was "unpromulgated") standard. The Tribunal disagrees. Petitioner would appear to have the Tribunal proceed in this matter under the premise that the sole criteria for determination of a special tools' definition is limited to MCL 211.9b and Rule 21, without full respect of the guidelines. While the Tribunal will accept that the seven STC guidelines do not flow in as direct a lineage from MCL 211.9b as the STC's Rule 21's statutory derivation, the guidelines certainly are a supporting element authorized under the legislature's statutory directive to the State Tax Commission. Even should lesser weight be accorded the guidelines than the combination of MCL 211.9b and Rule 21 taken together, their specific function must certainly be recognized as an adjunct aid to better understanding and applying the intent and authority of the statute and Rule 21.

That [*33] recognition, then, leads back into the primary aspect of Respondents' argument, that the definition of special tools is sufficiently rigid as to permit clear application to the listed tools of this matter. In fact, it is the Tribunal's view in this matter that the application of rule 21 and the seven guidelines is less than precise due to several instances of generalized language. For example, as to that phraseology which requires some contingent form of construction, note that Rule 21 leaves room for varying applications by the conceptual non-specific phrase: "are of such specialized nature that their utility and amortization cease." In a similar vein, the guidelines present other language equally demanding of interpretation, with statements of a forecasting nature present in # 3: "which are expected to change," in # 5: "are usually expected to change within three years," and in Guideline # 7 the generality: "amortization in the definition of special tools is more of a descriptive aid than a condition which must be met." An example of the need for a factual examination being key to findings of fact and law was evident in Tribunal Judge Michael Stimpson's "special tools" rulings in [*34] Danse Corporation v City of Madison Heights, MTT Docket No. 230939, pp 7-12; 1998 Mich Tax LEXIS 30. In that case, examination of the phrase "utility and amortization," as found in Rule 21, required the Tribunal Judge to evaluate issues of model production life, expected change, useful life, market factors, and highest and best.

Importantly, then, unlike the mechanical premise of Respondents' theory, there is both the need for interpretation of the law, and the further need for all facts to be clearly stated in a manner that permits application of the law to the facts. That is, the law (meaning the statute, and Rule 21 as aided by the guidelines) incorporates standards that require discretion in their application, and for that purpose there must be fact-clarification as preparatory to a finding. In this case, those unresolved fact issues require the attention of the Tribunal, as Petitioner points out, and those preclude dismissal under either (C)(4) or (C)(10)--since the factual clarifications are an essential prerequisite to a proper interpretative finding under the law. The need for factual explanation or clarification causes the (C)(10) fact-aspect of the motion to fail. [*35] Further, in the absence of settled facts, the law may not be properly interpreted and applied, thereby rendering moot the alleged "mistake of law" aspect of the motion, causing it to also fail. It should be noted that, although this first request included a jurisdictional point that was denied, there are two other pending jurisdictional requests for dismissal on other grounds, each of which possess merit and will be granted in the rulings to follow. Therefore,

**ORDER ONE: IT IS ORDERED that Respondents' first of three requests for dismissal, pursuant to MCR 2.116(C)(4) and 2.116 (C)(10), as generally premised on the useful life of special tools, is DENIED as to both (C)(4) and (C)(10), but reserving to other Orders to follow findings that "the Tribunal lacks jurisdiction."**

**B. Respondents' Second Request for Dismissal.**

**Dismiss Under MCR 2.116(C)(4): An Exemption or Taxable Status Issue is a Matter of Law, Not Fact, Under a § 53a Claim.**

Respondents' Motion and Petitioner's Response were summarized in earlier sections. The substance of Respondents' position is that an exemption or taxable status claim is a matter of law, not fact, while Petitioner holds [*36] that, even though application of law may be involved, the mistake is still one of fact as found in the erroneous filing.

Before reviewing the evidence and arguments, it is important to distinguish the difference between the dismissal issue in this second request of Part IV, Section B, from that of the third request in Section C following. The second and third dismissal requests, in terms of function, may be viewed as screening or defining criteria. The issue being considered at this point is narrow, compared to the more complex third and final issue. More fully stated, the matter at hand is to identify those claims that do not qualify as a mistake of fact, being either (1) issues of law, or (2) of a type "generically different than those listed in the statute." Respondents, at times, refer to the combination of these two simply as one of law, since that is the specific claim (i.e., the contention that Petitioner's exemption claim is a matter of law, not fact), but case law states otherwise.

The screening criteria of this Section B differs from that which will be presented in Section C. In Section C, Respondents' last request for dismissal, the focus will be upon the defining criteria [*37] for identifying those factors that constitute "mutuality" and "mutual mistake of fact." In reviewing arguments or selecting case law for either Sections B or C, it is important to differentiate which criteria is being addressed.

Turning now to the case citations offered by Respondents in support of their dismissal request, Respondents assert (Motion, p 7) that "there are three controlling published appellate court cases on point," and cite the three well-known cases pertaining to "mutual mistake of fact," with arguments presented on page 6 through para 4e of page 8 of the Motion. The Tribunal's review of case law found considerable material on mutual mistake within contract law, but Respondent's three cases were the only references from published appellate law that addressed Michigan's MCL 211.53a statute. There were Michigan Tax Tribunal (MTT) cases going back over the history of the Tribunal, but most were not appealed; several other MTT cases were appealed but the Appeal Court's Opinion unpublished, thereby failing to provide appellate precedent under provisions of MCR 7.215(C). Further, without regard to appellate precedent, most of the available case law pertains to the operative [*38] defining criteria of "mutual mistake of fact," and fails to address the narrow question presented by Respondents' second request for dismissal (see opening discussion). Finally, Petitioner's opposition arguments cited a number of cases, but those cases were not helpful, being mostly non-appealed MTT dockets, or being off-point for the matter at hand. Respondents' assertion as to there being only sparse case law on this topic appears to be supported by the Tribunal's own research.

The first case cited was Wolverine Steel Co v City of Detroit, 45 Mich App 671; 207 NW2d 194 (1973), lv den. As summarized by Respondents, "the Court held that the taxpayer's exemption issue could not be raised in a § 53a action," that type of claim being "viewed as a question of law, not fact." The second citation was Upper Peninsula Generating Co v City of Marquette, 18 Mich App 516; 171 NW2d 572 (1969), with Respondents summarizing "that a failure to obtain a required voter approval for the tax which had been paid was not a clerical error or mutual mistake of fact." The third case cited was Noll Equipment Co v City of Detroit, 49 Mich App 37, 41-42; 211 NW2d 257 (1973), Iv den, [*39] from which Respondents concluded that the "Court of Appeals held that a tax exemption issue was a question of law which could not be raised in a § 53a action." Based on these three cases, Respondents conclude that "the issue of taxable or nontaxable status is a question of law, not a mistake of fact, and that § 53a does not apply." They "are aware of no inconsistent appellate precedent." (Motion, p 8).

Petitioner counters in rebuttal of Respondents' case law citations, adding other cases, and taking a different view of the meaning of "fact" versus "law." For example, in reviewing Upper Peninsula Generating, Petitioner acknowledges that a § 53a mistake must be one of fact, not law. However, Petitioner's assertion is that General Products' mistakes are of the relatively simple reporting kind, different than those based on failure to obtain the voters' approval, as in Upper Peninsula Generating. That position, of ascribing the "fact" aspect to the incorrect reporting of information or payment of tax, not the precipitating action, or classifying by type (i.e., law or generically different), is an argument properly falling under Section C, and not on-point for this Section B. That [*40] distinction is an important aspect of Petitioner's rebuttal, and resides in most of the disagreement between the parties. Petitioner's view of Wolverine Steel, where an exempt status relative to federal constitutional precepts was found to be one of law, completely differs from that of the opposing party. There, Petitioner concluded that its own mistake was one of fact, based on a much-quoted commentary of the Court (Wolverine at 674): "We believe that § 53a alludes to. . ." Petitioner's view, the Tribunal notes, is in disagreement with the case law, since the Wolverine Steel Court found the mistake in that matter to be a mistake of law.

Again, Petitioner has shifted its view of case law away from the type of the mistaken issue, which is the central topic of this particular request for dismissal. As to Respondents' third citation, Noll Equipment, Petitioner doesn't address that case, leaving it unchallenged. The reason may be that Noll is adverse to its position, the clear ruling of that case being the Court's finding (Noll at 43) that such a matter was a mistake of law, not fact, further citing Wolverine Steel and Upper Peninsula Generating as being [*41] dispositive of that issue.

The Tribunal has reviewed the three appellate cases, and the parties' respective arguments. In doing so, the Tribunal has made its own independent analysis of the cases, identifying the several types of cases that clearly do not qualify for statutory relief as mutual mistakes of fact under MCL 211.53a, being either those mistakes that are of law, or those that present "generically different" topics. Although the Tribunal's analysis is not entirely coincident with Respondents' reasoning, it clearly rejects Petitioner's arguments, and finds the three case law citations sufficient to determine that Petitioner's exemption claim is not a mistake of fact but a matter of law, and of a type outside the statute. A summary of findings follow:

**1. Wolverine Steel** found that when the type of error claimed is "generically different from those listed in the statute," those other types of error are excluded from the law. Further, while a mutual mistake was made relative to an exemption claim for taxes levied in violation of the United States Constitution, that type of mistake was not a mistake of fact.

Supporting citations:

> When certain things are specified [*42] in a law intention to exclude all other from its operation may be inferred. This would seem to be particularly true when the type of error that is claimed to have been made is generically different from those listed in the statute. Wolverine at 675.
>
> . . . we believe that a 'mutual mistake' was made. However, appellant is still not entitled to recovery under MCLA 211.53a; MSA 7.97(1). An error made in determining the application of the United States Constitution to the tax laws of Michigan is not the type of mistake of fact required by this statute. Wolverine at 673-674.
>
> Case law in Michigan also indicates that the appellant may not recover, because if any mistake did occur it was not a mistake of 'fact'. Wolverine at 675.
>
> In the present case the appellees levied taxes in violation of the United States Constitution. Wolverine at 675.

**2. Upper Peninsula Generating** found that payment of an excess tax, although levied without voter approval and in violation of the Michigan Constitution, was not a mistake of fact.

Supporting citation:

> The failure to obtain the voters' approval for the millage in excess of the constitutional limitation cannot be characterized [*43] as a mistake of fact, and therefore plaintiff is not entitled to relief under this statute. Upper Peninsula Generating at 517.

**3. Noll Equipment** found that a taxpayer's acquiescence to a taxing authority's mistaken assertion of non-exemption was not a mutual mistake of fact, and that a constitutionally created tax exemption is a question of law, not fact.

Supporting citations:

> Summarizing the positions: Plaintiff argues that the question of immunity of the imported steel from taxation is a factual question. . .Noll Equipment contends that its acquiescence in defendants' assertion that the imported steel was not immune from local taxation constituted a mutual mistake of fact. . .Defendants claim that the question of availability is a question of law, not fact. . .Because no mutual mistake of fact arose between taxpayer and assessing officers, equitable relief cannot lie. Noll at 41-42.

> The Court: We think that *Upper Peninsula Generating Co* v *Marquette*, 18 Mich App 516; 171 NW2d 572 (1969), and *Wolverine Steel Co* v *Detroit, supra*, disposes of this issue. We are not willing to extend the *Spoon-Shacket* doctrine to this case. We cannot say that [*44] defendants' **mistake of law** constituted a constructive fraud. Noll at 43 (bold emphasis added).

Having considered the statute, the facts, the case law, and the parties' arguments, the Tribunal finds there to be merit to grant this second of Respondents' three dismissal requests for a finding of "lacks jurisdiction," based on the type of Petitioner's claim, an exemption, being a matter of law, not fact, and not of the type qualifying for "mutual mistake of fact" relief under MCL 211.53a.

Therefore,

**ORDER TWO: IT IS ORDERED that Respondents' second of three requests for dismissal of the special tools exemption claim, pursuant to MCR 2.116(C)(4) for lack of Tribunal jurisdiction, is GRANTED, as generally premised on the finding that the special tools exemption claim is a matter of law, not qualifying for "mutual mistake of fact" relief under MCL 211.53a, but reserving to another Order to follow a further finding that "the Tribunal lacks jurisdiction" on other grounds.**

**C. Respondents' Third Request for Dismissal.**

**Dismiss Under MCR 2.116(C)(4): The Criteria for Mutuality of Mistake and Fact Have Not Been Met.**

In the matter of one of the seven § [*45] 53a claims, all Respondents' requests for dismissal, and Petitioner's arguments in opposition, will be fully evaluated and ruled upon in their entirety, without regard to whether a prior request for dismissal had already been granted. The Tribunal recognizes that a lack of jurisdiction precludes other action (Fox at 242), but reserves effecting Fox until all the instant requests are evaluated in an orderly manner. Further, in so doing, the Tribunal's reasoning and resolution of all pending matters not only fully prepares all aspects of the instant motion should there be an appeal, but makes available those rulings as a reference for other portions of the docket not the subject of the instant motion. On this latter point, as will be seen in Part V, the reasoning and rulings of the instant motion prompt a *sua sponte* review relative to jurisdiction on the remaining six claims of the docket not included in the Motion. Accordingly, that brings this document to Respondents' third request for dismissal, which will proceed to its own conclusion.

The third (C)(4) "lacks jurisdiction" request for dismissal is on the basis that the "mutuality" criteria have not been met relative to [*46] "mutual mistake of fact." While a more detailed summary of positions was presented earlier, Respondents acknowledge that the parties disagree on the mutuality requirement; Petitioner acknowledges that case law is sparse on what MCL 211.53a intends by "mutuality," but that its mistaken filing accepted by the assessor entitles it to statutory relief. While the Tribunal is of the opinion that, while there is some case law on mutual mistake, there is no case law which defines "mutuality" solely within the context of MCL 211.53a. However, there are significant defining clues in one particular case. An important case of first impression, International Place, offers a published appellate decision pertaining to "clerical error" in the context of MCL 211.53b, the companion statute to the § 53a subject matter at hand. Later in this analysis, the Tribunal will look at this case under the rule of *pari materia* but, first, the Tribunal will examine the terminology of MCL 211.53a itself. Finally, the Tribunal will consider selected property and contract case law as will provide examples of "mutual mistake of fact," preparatory to ruling on Respondents' Motion.

It is the Tribunal's observation [*47] that, while the "mutuality" definition is critical, the entire phrase "mutual mistake of fact" must be examined to assure proper context. The Tribunal will proceed to examine the dismissal request on that basis. Doing so, where a scarcity of § 53a precedential case law provides no such clarity of definition, is an action that makes all the demands of a first impression case.

**1. The Statute's Defining Terminology.**

As a basic step in review of the issues, the Tribunal will examine the statute's words and phrases for clues to the manner in which a "mutual mistake of fact" claim qualifies for relief. For that purpose, the statute is recited, following which the different parts will be examined for meaning. MCL 211.53a; MSA 7.97(1) reads:

> Any taxpayer who is assessed and pays taxes in excess of the correct and lawful amount due because of a clerical error or mutual mistake of fact made by the assessing officer and the taxpayer may recover the excess so paid, without interest, if suit is commenced within 3 years from the date of payment, notwithstanding that the payment was not made under protest.

**a. "Any taxpayer."** Relief under MCL 211.53a is limited to a taxpayer only, [*48] in contrast to the companion statute, MCL 211.53b, which provides that action "may be initiated by the taxpayer or the assessing office."

**b. "Assessed and pays taxes."** The phrase "assessed and pays taxes" is written without a comma after "assessed," indicating that both assessment and taxes be involved in the events causing an appeal for relief. The statute does not pertain only to those errors or mistakes relative to assessments, or only to errors or mistakes in the payment of taxes. A taxpayer's claim of relief must pertain to a related joint erroneous condition of assessment and taxes.

**c. "In excess."** The "in excess" provision limits § 53a to overage situations only, in contrast to the companion statute, MCL 211.53b, which provides for both "overpayment or underpayment."

**d. "Assessed and pays taxes in excess."** Additionally, the combined phrase, "assessed and pays taxes in excess," being without a comma after "assessed" as noted above, provides a limiting qualification that the joint erroneous condition be an excess as to both the assessment and the tax payment, the two being directly related.

**e. "Because of."** The phrase "because of" is one of the more important [*49] defining criteria of the statute, and one which appears to have been overlooked by the parties in their briefs. The dictionary definition for the word "because" is "for the reason that; since." Usage is defined: "Because" is the most direct of the conjunctions used to express cause or reason. It is used to state an immediate and explicit cause. . . ." The prepositional phrase "because of" means "by reason of; on account of." American Heritage Dictionary.

Of note is that the cause or reason is separately distinguished from the erroneous assessment and taxes, a form of cause and effect. They are not the same; that is, the error or mistake occurs separate from the overage condition of the assessment/taxes. The excess assessment and taxes are not the error or mistake. The statute's phrase "because of" requires that separation.

It is worth noting, to avoid misunderstanding, that one obvious difference between a mutual mistake and a clerical error is that a clerical error may be unilateral, while the mutual mistake must include the parties by definition. That observation may affect the point of primary cause at which the error or mistake occurs. The mutual mistake may be much [*50] earlier in time because of the events required for the mutuality of the fact and the mistake to evolve. A clerical error may be either mutual or unilateral, the statute not specifying, but is more likely to be unilateral, and thus also likely to be closer in proximity to the resulting overage assessment/payment.

Wolverine Steel provides a clear "because of" example, the majority opinion correctly demonstrating cause and effect. The same case provides an example of improper application in the dissenting opinion. Looking first at the dissenting opinion, it states: "The statute does not address itself to the issue of *why* the mistake was made." Wolverine at 677 (italics in original). It would appear that dissenting view overlooked the statutory phrase "because of," which does require that a cause or reason be found. Having eliminated an important cause and effect requirement, the dissenting opinion then moved into a second conclusion with which the Tribunal disagrees. The mutual requirement was described as the payment of an incorrect tax, and the City's acceptance of the tax payment. That, in the Tribunal's opinion, was not a description of a mutual mistake that had a "material [*51] effect" upon the incorrect tax payment. The mutual mistake that had a "material effect," as the primary mutual mistake, occurred earlier in the mistaken belief of an exemption. It was not at the point of the payment and receipt of the incorrect tax, as proposed by the dissenting opinion, since that event was the result of an earlier cause. It is important to identify the proper mutual mistake, giving attention to cause and effect ("because of") to avoid this faulty line of reasoning. The Tribunal will give no weight to the dissenting opinion in that case.

Clearly, the majority opinion in Wolverine Steel had it right. They implemented the "because of" requirement by identification of an earlier event, the primary event constituting a "mutual mistake" (but later found to be of law, not fact) that had a "material effect" upon the assessment and taxes. That earlier cause, as stated in the facts of the case, occurred when the taxpayer relied "on information provided to its controller in April 1967 by an auditor from the personal property division of the Board of Assessors of the City of Detroit." Wolverine at 672. The parties had access to and focused upon the same [*52] fact, and each arrived at the same mistaken belief concerning that fact--assuming that the personal property was not exempt. That mutual mistake was separately distinguishable as the primary cause resulting in

the erroneous assessment and payment of taxes later in August 1968. This was the evidence from which the majority opinion then proceeded to find there had been a mutual mistake, although one of law not fact. Once again, the point at which the mutual mistake had taken place was separate and distinct from the resulting erroneous assessment and tax payment, and clearly preceded it as the "because of" cause or reason for an overage assessment/tax.

Another example of cause and effect ("because of"), although unpublished, is an appellate decision referenced by Petitioner. That case is found in Atkinson v City of Detroit, an unpublished opinion per curiam, Court of Appeals, issued June 25, 1999; COA Docket Nos. 199537 and 199803, in which the Court found the Tribunal to have erred in its interpretation of "mutual mistake of fact." There, the location of a boundary between Detroit and Grosse Pointe Park was found to be a "basic assumption that materially affected the relationship [*53] between the parties." Atkinson at 4. The mutual mistake of fact identified by the Court had occurred earlier. The location of the municipal boundary, as the primary cause, was separate and distinct from the resulting assessment and tax collection. The mutually mistaken fact and belief pertaining to the municipal boundary preceded the assessment/tax; they were not the same.

**f. "Mutual Mistake."** The meaning and application of the word "mutual," and the phrase "mutual mistake," are the pivotal points in understanding the statutory language. Again referring to the dictionary, "mutual" means "having the same relationship each to the other. . .possessed in common." The word "mistake" is defined as "an error or fault. . .misconception or misunderstanding. . .to recognize or identify incorrectly." American Heritage Dictionary.

A law dictionary may be a better source of information in certain instances, where the word or phrase could have other shades of meaning in a legal setting. For this purpose, the Tribunal references Black's Law Dictionary, Abridged Sixth Edition (1991). Use of legal definitions in this instance must be recognized as being based in contract law, not [*54] property tax law. For example, Black's definition of "mutual mistake" clearly incorporates reformation of an instrument, the terms of an agreement, the written form of an agreement, and the phrase "meeting of the minds." The context is also clearly contract law in Black's definition of "meeting of the minds," the definition reading: "Meeting of the minds. An essential element of contract, is mutual agreement and assent of parties to contract. . . ." Although not directly addressing a "meeting of the minds," an unpublished Court of Appeals opinion, St. Paul Lutheran (final para), found that "mutual mistake of fact" did not require the parties to meet and discuss property status as a condition to filing a § 53a petition. The Tribunal notes, however, that such a meeting would certainly have helped establish whether there existed the degree of mutually recognized facts and commonly held mistaken belief to fulfill the statute's requirements.

The word "mutual" in Black's means "common to both parties; interchangeable; reciprocal," and the word "common," applicable to that used in the definition, means "shared among several." The phrase "mutual mistake" carries the meaning [*55] of being ". . .one common to both or all parties, where each party labors under the same misconception. . ." That commonality, in the Tribunal's view, is a critical aspect of understanding mutual mistake in the context of § 53a.

Referencing contract case law for clues to "mutual mistake," several citations are noted in defining general characteristics of what that term does and does not mean. First, the mutual mistake must be absent fraud or an illegality, Atlas Corp v The United States, 895 F2d 745,750 (1990). It is to be the result of an "honest belief," Harris v Axline, 323 Mich 585, 589; 36NW2d 154 (1949), and formed "honestly and in good faith," Gordon v City of Warren Planning & Urban Renewal Commission, 388 Mich 82, 89; 199 NW2d 465 (1972). An example of when the "doctrine of mutual mistake is not applicable," was found to be where a party was careless or negligent, or employed "sloppy" practices, such as in misinterpreting facts. Under those circumstances, the mistake was found to be unilateral, the understanding of the parties having never met. City of Warren v Maccabees Mutual Life Insurance Co, 83 Mich App 310, 317; 268 NW2d 390 (1978), lv [*56] den. "By definition, a mistake cannot be discovered until after the contract is executed," since "if the parties were aware of the defect and their error prior to the sale, there would be no mistaken fact." Messerly v Barnes, 417 Mich 17, 25, n 10; 331 NW2d 203 (1982). There need not be shared communication as a condition of mutuality, as the Appeals Court stated in the St. Paul Lutheran case, but the Tribunal observes it certainly would enhance the evidence of mutual fact and mistake, as it did in Wolverine Steel at 672. Evidence of a mutual mistake of fact is to be "clear and convincing," Harris at 589, but the Tribunal cautions that a standard of evidence being clear is not to be confused with the standard for Petitioner's burden of proof. The standard in assessment cases (which is different from exemption cases) is "by the greater weight of the evidence." Great Lakes Div of Nat'l Steel v City of Ecorse, 227 Mich App 379, 409-410; 576 NW2d 667 (1998); citing Alhi Development Co v Orion Twp, 110 Mich App 764, 768; 314 NW2d 479 (1981).

While "mutual mistake" terminology found in contract law appears to be the same as that in property tax law, the [*57] mutuality aspect in contract law has an advantage of observable situational clarity. The written contractual agreement offers that advantage. No such written agreement occurs in property tax law. Thus, property tax case law,

being absent the contract as a written evidentiary reference, cannot support the many complex situational possibilities arising under contract law, such as each party forming a different mistaken belief from the same fact. In lieu of the contract as a fact reference, property tax cases must find their evidence of mutuality in the clarity of the parties' actions. For the trier of fact to form an opinion of "mutual mistake of fact" under property tax law, a clearly identifiable fact or set of facts is required from which a clearly identifiable mistaken belief is drawn--and that both parties fulfill those conditions. Mutuality occurs at an intersection of the parties' respective specific focus upon a singular fact or set of facts, and the resulting mistaken belief. That is, the statute's phrase "mutual mistake of fact" necessitates mutuality as to both the referenced fact being materially the same information, specifically contemplated by both parties, and the mistaken [*58] belief concerning that fact be formed by both parties. Specific contemplation is not casual, as in the ordinary process of reviewing numerous fact items (for example, in the course of assessing/appraising) without addressing the specific pertinent fact or set of facts in the context of the mistake. The word "contemplation" is defined as "thoughtful observation." American Heritage Dictionary. Without that specific "thoughtful observation" pertaining to the facts, there can be no mistaken belief formed. As explained in a breach of contract litigation before the United States Court of Appeals: "If the existence of the hazard was beyond the contemplation of the parties, they could form no belief concerning the fact." Atlas at 752.

Property tax case law offers two good examples of clearly discernible mutual mistake. The first example of mutual mistake, although one of law not fact, is from Wolverine Steel. There, the parties both specifically focused upon, and contemplated, the same fact data, from which they formed the same mistaken belief, that an exemption was available. Another example from property tax case law, this time being mutual mistake of fact, is found in an unpublished [*59] appellate decision in Atkinson. In that instance, both parties referenced and contemplated the same fact, the boundary line between municipalities, and formed the same mistaken belief concerning that fact, its location relative to their collective properties. These two cases clearly demonstrate the simple and obvious defining criteria of mutuality in a § 53a environment, and its application in the equally important "because of" requirement discussed earlier. The concept of mutual mistake in property tax law, in its application, is that mutuality must be present at both the level of referenced fact and the mistaken belief. The test criteria is simple. If each party references the same factual data, but draws different mistaken beliefs, or references different factual data, and draws the same mistaken belief, there is no "mutual mistake of fact." This concept of simple and readily identifiable mutuality will be further developed shortly in an analysis of International Place under the rule of *pari materia*.

**g. "Fact."** The dictionary definition of the word "fact" is "something done. . .something presented as objectively real; something that has been objectively verified. [*60] . ." The American Heritage Dictionary, Second College Edition (1985). The law dictionary expands upon that definition: "a thing done; an action performed or an incident transpiring; an event or circumstance; an actual occurrence. . .that which has taken place." Black's Law Dictionary, Abridged Sixth Edition (1991).

On the topic of "fact," contract case law offers some illustrations, particularly as to what is not a fact in the context of "mutual mistake of fact." For example, the Court found "no fact is involved" where there was "strictly a matter of contract interpretation" in a dispute over costs, the selection of appropriate sets of coefficients having affected a price calculation. C. W. Over & Sons, Inc. v The United States, 45 Fed CI 502, 506 (1999). In another, but complex, case of contract law, the situation involved toxic cleanup costs resulting from a potential hazard which could not have been contemplated. It was found that the fact must be one known to the parties at the time of the contract. Since later events "were beyond the contemplation of the parties, they could form no belief concerning that fact. There can be no 'mutual mistake.'" Atlas at [*61] 752. However, as to knowable and unknowable, the Atlas Court clarified that "even though the *outcome* of a fact is unknowable, the parties can make a mistake concerning that fact." Atlas at 751 (italics in original). That future unexpected facts do not qualify was clearly stated in yet another case: "Mutual mistakes must concern past or present facts, not unexpected facts that occur after the document is executed." (Citations omitted). Fillion; Bass v Fillion, 181 F3d 859, 864 (1999).

**h. "Made by the assessing officer and the taxpayer."** The phrase "made by the assessing officer and the taxpayer" makes clear that, to qualify under the statute, the "mutual mistake of fact" must be one that occurs between only those two identified parties. The language of the statute attaches the parties' limitation only to the "mutual mistake of fact," and not to clerical errors. The statute neither specifies a limitation of who must make the clerical error, nor limits it by mutuality--those conditions being addressed only to "mutual mistake of fact."

While it may be obvious, the phrase "assessing officer and the taxpayer" should not cause confusion as to whom the relief under [*62] MCL 211.53a is available. Here, under § 53a it is available only to a taxpayer, while under § 53b, subsection (2), relief "may be initiated by the taxpayer or the assessing officer." Other statutes, case law, and jurisdic-

tional rules apply to disputes involving, for example, combinations of the assessor, the Board of Review, the assessing community, the County Equalization Department, or the State Tax Commission.

**2. The Defining Criteria of International Place.**

The phrase "clerical error or mutual mistake of fact" is in itself only partially self-defining. While some clues may be gleaned from contract law, the process must distinguish its operative definitions from those of property tax law within the legislature's intent for MCL 211.53a. That task did not become clearly possible until publication of the first impression case, International Place, a published appellate decision pertaining to "clerical error" under the companion statute MCL 211.53b. It is an important key in this matter. That case opened the way to application of the rule of *pari materia*, using the characteristics of "clerical error" to understand the defining criteria of "mutual mistake of fact." The [*63] Tribunal is not aware of any other published appellate cases centered on International Place in defining "mutuality" solely within the context of MCL 211.53a.

Petitioner argues that International Place is of no assistance in defining "mutuality" under MCL 211.53a. The Tribunal strongly disagrees, holding the opposite opinion, that International Place is the only available case law which provides an opportunity for *pari materia* in this matter. The basis for use of the rule of *pari materia* is cited from two cases:

> It is a well-accepted rule of statutory construction that the terms of statutory provisions having a common purpose should be read in *pari materia*. (Citation omitted). The object of the rule requiring the reading of such provisions in *pari materia* is to give effect to the legislative purpose as found in statutes on a particular subject. Michigan Bell Telephone Co v Department of Treasury, 229 Mich App 200, 216; 581 NW2d 770 (1998).
>
> Statutes in *pari materia* are to be construed together. Sections MCLA 211.53a and MCLA 211.53b both deal with procedures for correcting "clerical errors" and "mutual mistakes of fact." Wolverine at [*64] 674.

By extracting that applicable defining criteria from International Place, and applying the rule of *pari materia* as practiced in Wolverine Steel (at 674) and Noll Equipment (at 43), both "mutuality" and the phrase "mutual mistake of fact" may be addressed within the context of MCL 211.53a. For ease of reference and comparison, the two companion statutes are recited: MCL 211.53a; MSA 7.97(1); and the pertinent parts of MCL 211.53b(1); MSA 7.97(2), as last amended with minor language changes to the section cited.

> **MCL 211.53a; MSA 7.97(1)**: Any taxpayer who is assessed and pays taxes in excess of the correct and lawful amount due because of a clerical error or mutual mistake of fact made by the assessing officer and the taxpayer may recover the excess so paid, without interest, if suit is commenced within 3 years from the date of payment, notwithstanding that the payment was not made under protest.
>
> **MCL 211.53b(1); MSA 7.97(2)**: If there has been a clerical error or a mutual mistake of fact relative to the correct assessment figures, the rate of taxation, or the mathematical computation relating to the assessing of taxes, the clerical error or mutual [*65] mistake of fact shall be verified by the local assessing officer, and approved by the board of review. . .If the clerical error or mutual mistake of fact results in an overpayment or underpayment, the rebate, including any interest paid, shall be made to the taxpayer. . .A rebate shall be without interest. . .A correction under this subsection may be made in the year in which the error was made or in the following year only.

The following items list defining criteria for "clerical error," each being applicable to the "mutual mistake of fact" definition being sought, using the rule of *pari materia* from International Place Apts-IV v Ypsilanti Twp, 216 Mich App 104; 548 NW2d 668 (1996); app den 454 Mich 903; 564 NW2d 44 (1997).

**a. Statutory relief is narrow in scope, and is designed by the legislature to address only a very specialized type of relief.**

The "clerical error" under MCL 211.53b in International Place is available for only those very specialized cases of a "typographical, transpositional, or mathematical nature," and in the same manner, the "mutual mistake of fact" under MCL 211.53a is specifically limited. Contrary to Petitioner's characterization of [*66] the statute as being liberal, it is

not. The only aspect which may be viewed as liberal is (1) in the "look-back" feature, being one prior year for MCL 211.53b, and three prior years for subject MCL 211.53a, and (2) that the statute does not mandate a Board of Review appearance to file a petition with the Tribunal. Otherwise, relief is limited to only very specific cases of error or mistake. Permitting a broader range of error or mistake, although motivated by an incorrect assessment/tax, would be outside those narrow limits and contrary to the scope of the statutes. Notice that although both the assessment and tax payment for the International Place Apartments property were incorrect, and the facts of the error were not in dispute, the error was not "correctable under the statute." International Place at 110. No relief is available under the statute unless the narrow criteria of the statute are met.

A particular statement in Wolverine Steel, used by Petitioner in its rebuttal arguments, is being improperly cited to seek liberal access to the statute. The misconception issues from the following quotation: "We believe § 53a alludes to questions of whether or not the taxpayer [*67] had listed all of its property, or listed property that it had already sold or not yet received, etc." Wolverine at 674.

That quotation is not a definition of "mutual" or "mutual mistake of fact," and it certainly is not a statement of the procedural process that qualifies any instance of assessment/taxes overage for relief under MCL 211.53a. Yet, this statement regarding incorrectly listed property is viewed as a form of procedural pre-qualification for relief. While certain taxpayer/assessor situations may involve incorrectly listed property, that event by itself does not result in open access to the statute, as learned from International Place.

In fact, the statement from Wolverine Steel is not a ruling, but mere commentary, as is denoted by its context and use of the word "alludes." The dictionary explanation of that word's usage is as an "indirect reference that does not identify specifically." American Heritage Dictionary. Its purpose, within the Court's reasoning in Wolverine Steel, was only to suggest some types of mistakes or errors that might qualify, not to make a procedural statement of automatic inclusion. Further, the list of suggested types was [*68] for illustrative purposes only, in the context of presenting a contrast to the Court's finding of a United States Constitutional tax law being a specifically non-qualifying "generically different" mistake than required by § 53a. That relief under § 53a was intended to be narrow, that is, specifically limited, and not liberal as Petitioner would have the Tribunal believe, is made clear from Wolverine at 676 (emphasis added): ". . . § § 53a and 53b of the statute previously quoted allow us **specific limits** with which to consider a refund. . . ."

That doesn't mean, however, an aggrieved party is without other available remedies, where a petition for relief is properly and timely filed, and falls within the subject matter jurisdiction of the Tribunal. It is worth noting that relief is available under MCL 211.154 for property "incorrectly reported or omitted," and that statute provides for a liberal look-back of the two prior years. In fact, it appears to the Tribunal that much of Petitioner's complaints properly belong classified as § 154 issues, since they are "incorrectly reported or omitted" claims. And, of course, there is always the very versatile path of relief through a Board [*69] of Review appeal, followed by a timely Tribunal filing under MCL 205.735(1) and (2). Clearly, it would be inappropriate to advance a petition under MCL 211.53a and 211.53b, and ignore the "specific limits" of those statutes. For certain other matters not falling within their narrow scope, such as the misreported property of the instant matter, the legislature did make available alternate broader remedies.

**b. The definition must be simple, not complex, and readily discernible on its face.**

The Appeal Court's finding of "clerical error" rejected the complex concepts of "reappraisal or reevaluation through the use of new or existing data of any type." Instead, the Court affirmed the definition as one of a "typographical, transpositional, or mathematical nature." International at 109. It would be incongruous for "clerical error" under MCL 211.53b to be simple and limited in scope, but "mutual mistake of fact" under MCL 211.53a to be complex, broadly inclusive, and liberal in application. Therefore, the conclusion of "mutual mistake of fact" under MCL 211.53a being as equally simple in its application and identification as MCL 211.53b was in International Place, is well supported [*70] under the rule of *pari materia*.

Under this standard, much of the complexity of contract law, the multiple combinations of fact and mistaken belief, would be nearly impossible to discern under property tax law because of the absence of a written agreement for fact-finding reference. For applications under property tax law, there being no written understanding as in contract law agreements, the mutuality of the fact and the mutuality of mistaken belief must be so blatantly simple and obvious that, in review of events, both are clearly discernible on their face by a trier of fact.

In the Tribunal's view, that level of obviousness--the mutual mistake being equal in simplicity as were the clerical errors defined in International Place--is met only by dual mutuality, as the only form of mutuality that lends itself equally to ready discernment and simplicity. That is, the fact is mutual as to the material data reviewed and contem-

plated, and the mistaken belief is mutual in all respects, as suggested by Respondents' Motion in this matter. The mutuality occurs at an intersection of the parties' respective specific focus upon a singular fact or set of facts of material import, from [*71] which is drawn a common mistaken belief. By the same means, simplicity is distinguished by the mutuality criteria, both parties being aware of and having contemplated the same material fact, and arriving at the same mistaken belief, both the fact and mistaken belief being the primary cause of the erroneous assessment/tax. In application, the test criteria are simple, and any deviation from dual mutuality will fail to qualify. As an example of non-compliance, if each party were to reference the same material factual data, but draw different mistaken beliefs--or each reference different factual data, but both draw the same mistaken belief--there would be no mutuality as to both fact and belief, and no "mutual mistake of fact." In the same vein, if one party accessed material fact not known to the other--or developed a mistaken belief not contemplated by the other--there may be mistake but it would be unilateral, and no "mutual mistake of fact" would have occurred. Other combinations of fact, mistake, unilateral, and mutual elements are possible, such as illustrated here, but if not mutual in all respects, there is no access to MCL 211.53a.

This concept of simple and readily identifiable [*72] mutuality will be further developed shortly in an analysis of International Place under the rule of *pari materia*.

**c. Cause and effect required by "because of" phrase in statute.**

The statutory language "because of" in MCL 211.53a leads directly to the defining criteria that the cause or reason (error or mistake) be separately distinguished from the resulting excessive assessment/payment, a relationship of cause and effect. The presence of incorrect assessment/tax is not the mutual mistake or clerical error itself in a § 53a case--otherwise the "because of" requirement would not be met. Mutual mistake will usually precede the incorrect assessment/tax by whatever time is required for the events to evolve. In the case of clerical error, as a possibly unilateral event, it may be in either distant or close proximity to the actual incorrect result. This cause and effect relationship is an important point in defining criteria under § 53a, and one discussed earlier in connection with the misplaced reasoning of the dissenting opinion in Wolverine Steel. In that earlier discussion, it was noted that the mutual mistake must be correctly identified as the primary mistake, [*73] the one that has a "material effect" upon the erroneous assessment/tax, not just any mistake. In Wolverine Steel it had occurred earlier in the form of a mutually mistaken belief concerning an exemption. It was not in the payment and receipt of the incorrect tax, that event being the result of an earlier cause.

As further clarification concerning the cause and effect, it is noted that the language of the companion statute, MCL 211.53b, is not as strong in requiring the separation of cause and effect. The § 53b companion statute reads in part (underline added): ". . .a clerical error or a mutual mistake of fact relative to the correct assessment figures, the rate of taxation, or the mathematical computation relating to the assessing of taxes. . . ." The § 53b statute uses the phrase "relative to," the word "relative" being defined by the dictionary as "having pertinence or relevance; connected; related." American Heritage Dictionary. However, cause and effect is still there, as is evident in the Court's review under § 53b in International Place, identifying the area of clerical error inquiry as an earlier filing mistake, not the incorrect assessment figure as the error. [*74] Further, just as not every error or mistake in § 53a will qualify, the § 53b phrase "relative to" still requires the error or mistake to be of a qualifying sort, that point having been made clear by the Appeals Court in International Place. The Court looked to both the primary reason of how the mistake arose (the assessor's filing difficulties being facts not in dispute), and whether the error was of a qualifying sort (it was not). There, the mere presence of an erroneous assessment did not suffice.

As an earlier observation noted, concerning the cause and effect provisions of the § 53a statute, the error or mistake may be found either separate from, or in close proximity to, the incorrect assessment/tax, but not coincident with it. Whether remote from, or in proximity to, the erroneous assessment depends on the facts and, it appears, whether it is a matter of mutual mistake or clerical error. For example, there could be a typographical error in the entry of data, where a zero digit might be left out of the assessment figure. The omission of a digit would be the clerical error, resulting in an incorrect assessment figure and tax payment. That would be an example of a clerical [*75] error (which may be unilateral) in close proximity to a resulting incorrect assessment and tax payment under § 53a. Or, the typographical error could be separate from the incorrect assessment figure, perhaps having occurred earlier in transferring data from an old assessment card to a new card.

Where a mutual mistake of fact is involved, it is much more likely to take place notably separate (earlier in time) from the resulting erroneous assessment/tax, because of the likelihood that the mutuality events took more time to evolve. Such an example is in Atkinson, a case introduced earlier, in which the Court of Appeals found the Tribunal to have erred in its interpretation of "mutual mistake of fact." There, a mistaken belief in the location of a boundary be-

tween Detroit and Grosse Pointe Park, held by both parties as the "basic assumption," was found to be a "mutual mistake of fact." Although cause and effect may be expected to be well separated for mutual mistake of fact, it need not preclude contrary qualifying situations. As a hypothetical example, events of cause and effect could be close in time, perhaps from a personal property audit or a meeting of the taxpayer and assessor [*76] near tax day. The Tribunal presently has no case law examples to illustrate this possibility.

**d. Not all mistaken acts qualify for examination of cause.**

In International Place, the facts were not in dispute as to how the mistake arose, being the "misfiling of a document." The mere presence of an incorrect assessment/tax did not invoke the statute's relief. Notice that the assessment and taxes for the International Place Apartments property were incorrect before the appeal, they were not correctable under the chosen statute, and the error remained after the appeal. The Court also noted, and specifically excluded, other "ministerial" acts of omission, that of failing "to consider all relevant data," and the associated acts of commission, "reappraisal or reevaluation," which were possible corrective means not permitted under the statute. International Place at 109. Therefore, a defining criteria is that the proper causal error/mistake be correctly identified, to avoid being misguided in whether "that mistake is correctable under the statute."

**e. The identified mistake must be the primary cause of the erroneous result.**

The mistake identified by the parties in International [*77] Place, and used by the Court in its analysis, was one which had a "material effect" on the outcome (Atlas at 750), that is, the "misfiling of a document" was the primary cause of the erroneous result. In reviewing the arguments of the parties, and their respective views of case law, it becomes clear that where one looks for the mistake directly impacts on the characterization of the type of mistake. Different mistakes may be observed at various levels of activity, as they were in International Place, and which one of those mistakes is chosen for examination may seriously impact the outcome. Identification of the primary mistake, the one which had a "material effect" on the outcome, not supplemental or secondary mistakes, is essential. The importance of identifying the primary cause and effect is essential to proper examination of "mutual mistake of fact" of MCL 211.53a, the Atkinson Court concluding the mutual mistake in that case to be "a 'basic assumption' that 'materially affected' the relationship between the parties." (Atkinson at 4).

**3. Examples of "Mutual Mistake of Fact" from Case Law.**

**a. Caution regarding use of contract case law and definitions** [*78] .

First, caution must be exercised in use of contract-based case law and definitions on "mutual mistake," in that there is the element of "equity" in contract law that is not present in property tax law. The two sectors of law are not the same. That point was made upon several occasions in Spoon-Shacket Company, Inc v County of Oakland, 356 Mich 151, 171; 97 NW2d 25 (1959), which held that, since "governmental powers of taxation are controlled by constitutional and statutory provisions. . .it is not possible to adjudicate issues arising under taxation laws by the general application of equitable principles." (Other crediting citations omitted). Spoon-Shacket overturned an earlier case, Consumers Power Company v County of Muskegon, 346 Mich 243; 78 NW2d 223 (1956), in which the Consumers Court denied the right to recover taxes paid under a mutual mistake. Both the Spoon-Shacket and Consumers cases present interesting expressions of viewpoint relating to whether equitable relief should be granted by the Court when not offered by statute, since such an exercise is a legislative prerogative. In reviewing these two cases in context relative to equitable [*79] correction of mistake, it is pertinent to note that subsequent to the 1956 Consumers case, but prior it being overturned by the 1959 opinion in Spoon-Shacket, § 211.53a was enacted by the legislature (PA 1958, No 205, eff September 13, 1958).

In contract law, the equitable relief aspect involves the Court's power and discretion to affect the parties' agreements through reformation, rescission, cancellation, injunctions, estoppel, specific performance, damages, and such other relief to effect a just, fair, and lawful outcome. That is not the case with Tribunal dockets. It is understood that the Tribunal is not a "court of equity" in the sense referenced by the Supreme Court's Opinion; it does not have those powers. Rather, "equity" for the Tribunal is limited to a meaning of being "just, impartial, and fair" in application of the constitutional and statutory provisions for taxation and those other matters within its jurisdiction as a quasi-judicial agency. It is understood, therefore, that the range of rulings and relief found in contract law cases are much broader than are applicable to Tribunal cases.

[EDITOR'S NOTE: TEXT WITHIN THESE SYMBOLS [O> <O] IS OVERSTRUCK IN THE [*80] SOURCE.]

For example, much of contract law is concerned with mutual mistake in the context of equity, and whether the circumstances permit the Court to void, or recast, or make fair, a contractual agreement. Possible acts of equity are guided

by four tests in considering reformation (changes effecting a status quo) of a contractual agreement. While reformation has no application to property tax law, several important foundational concepts and terminologies are expressed as useful insights, to which the Tribunal takes note. From Atlas Corp v The United States, 895 F2d 745, 750 (1990), but deleting the fourth item as obviously not applicable:

> A party seeking to state a claim for reformation of a contract under the doctrine of mutual mistake must allege four elements:
>
> (1) the parties to the contract were mistaken in their belief regarding a fact;
> (2) that mistaken belief constituted a basic assumption underlying the contract;
> (3) the mistake had a material effect on the bargain; and
> [O> (4) the contract did not put the risk of the mistake on the party seeking reformation <O].

Key concepts and terminology from the above definition, noted by the Tribunal as useful in [*81] property tax applications, are: the mutuality of mistaken belief, the requirement of "basic assumption" cause, and the resulting "material effect."

Second, as noted earlier, contract law has a distinct advantage over property tax law, that distinct difference being the existence of a written agreement or contract of what was thought by the parties to be their mutual understanding. The facts of contractual agreements are embodied in, or referenced by, deeds, bids, sale agreements, leases, mortgages, wills, closing agreements, audits, surveys, stipulations, appraisals, land contracts, employment agreements, premarital agreements, divorce decrees, and so forth. Mutual mistake of fact in contract law is the resulting failure of the agreement to express the true intention of the parties. In property tax law, the advantage of the contractual agreement, as a reference document to a claim of mutual mistake of fact, is missing. That missing element weakens the opportunity to examine the state of facts and belief that constitute the mutual mistake. Absent the advantage of a written agreement, a clear and simple definition of mutuality is a necessity, a view supported by the Tribunal's analysis [*82] presented throughout this Order. The Tribunal concludes that, for mutual mistake under property tax law, the defining criteria should be simple, and the mutuality of fact and mistaken belief should be obvious and readily identifiable on its face.

**b. Examples of mutual mistake from contract case law.**

Harris: A good example of mutual mistake of fact is found in a Michigan case involving a land contract sale, and a mistaken belief concerning the amount of property frontage. Harris v Axline, 323 Mich 585; 36NW2d 154 (1949). The property dimensions in the land contract were as legally described in the abstract of title and tax receipts. Prior to purchase, the buyer and agent of the seller together paced off the 40' frontage, confirming the land description. Later, a survey revealed that the City owned 6' of the frontage, leaving only 34' of land for conveyance. The Michigan Supreme Court found that "both parties were mistaken as to the actual size of the lot described in the contract and the fact that the plaintiffs were unable to convey good title to the whole 40 feet." Harris at 589. Notice that both parties had full access to and focused upon the facts, and having [*83] contemplated, shared the same mistaken belief. Note also that the primary mistake was not the land contract, but the mutual mistake of fact was that "all the parties were mistaken in the honest belief that the property had a 40-foot frontage." Harris at 588. Mutuality as to both fact and belief, and the required separation of cause and effect, were clearly evident.

Gordon: Another good example of mutually mistaken fact, again from a Michigan Supreme Court case, involves a planning consultant's incorrectly drafted site plan incorporating an error in the true location of road right-of-way. Gordon v City of Warren Planning & Urban Renewal Commission, 388 Mich 82; 199 NW2d 465 (1972). The planning consultant was unaware that a road widening had been taken from only one side of the right-of-way, and mistakenly assumed the road had been widened equally from the centerline. The plaintiffs, in litigation seeking approval for a multiple-dwelling project, at the suggestion of the trial court, entered into a site plan approval agreement with the City as part of the judgment. The judgment incorporated the site plan by reference. Later, after construction had begun, the consultant's [*84] mistake was discovered, the result being that there were actually 69 less feet than had originally appeared. On appeal, the Supreme Court found that both parties "honestly and in good faith believed that the site plan was proper . . .," concluding "that there was a mutual mistake of fact . . ." Gordon at 89. Again, notice that both parties had access to and referenced the same fact, from which both drew the same mistaken belief. Mutuality was clearly evident in the reference to fact and in forming the mistake, with the cause and effect also being obvious.

Messerly: A third example emphasizes the importance of identifying the mutual mistake of fact as the basic assumption that produced-the material effect. The simply stated facts of this case, Messerly v Barnes, 417 Mich 17; 331 NW2d 203 (1982), were that a three-unit apartment building had been sold on land contract. It was later discovered to have an inadequate and incurable septic system. Unknown to the parties, the defective system had been installed by a prior owner, now rendering the property to be uninhabitable and non-income producing. The purchaser examined the property prior to purchase, there was no fraud, [*85] and the parties entered into the land contract under a mutual mistake of fact. Messerly at 22. The mutuality in Messerly is described by the Court: "All of the parties erroneously assumed that the property transferred by the vendors to the vendees was suitable for human habitation and could be utilized to generate rental income." Messerly at 30. The mutual mistake of fact was not in the land contract, and not even in the adequacy of the septic system. It was even more basic than that, being mistaken assumptions regarding "suitable habitation" and ability of the property to "generate rental income." The land contract was merely the summary culmination of earlier events.

**c. Scarcity of property tax case law.**

Both parties are correct in recognizing sparse data on this topic. Respondents' three cases cited in Section B (Wolverine Steel; Upper Peninsula Generating, and Noll Equipment) were useful for the purposes of identifying exclusions. Otherwise, their function in defining mutuality is less helpful, although the Tribunal will draw upon aspects of Wolverine Steel. Generally, the definition of mutuality, within the context of a § 53a claim, remains [*86] nominally addressed by property tax case law. The Tribunal's review of other case law found considerable material on "mutual mistake" within contract law. The difficulty is that property tax law and contract law are not the same, and caution must be exercised in drawing inferences based mostly on similarity of terminology. The subject case is a property tax matter, and preferential respect is to be given the specific relief and characteristics of property tax law.

There are available Michigan Tax Tribunal (MTT) cases going back over the history of the Tribunal, some of which are published and available either on Lexis or in the "Michigan Tax Tribunal Reporter," but those were not appealed. There are several other MTT cases which were appealed but, unfortunately, the Appeal Court's Opinions were unpublished, thereby failing to provide appellate precedent under provisions of MCR 7.215(C). The Tribunal will look at these several cases for any clues to a better understanding of MCL 211.53a, but respecting their non-precedential status.

Petitioner makes extensive citation to MTT cases. However, the opinions do not represent appellate precedent and, frankly, involve some instances of an [*87] observed less-than-helpful variableness over the years of Tribunal history. While MTT cases may be used in some instances for purposes of illustration, MTT cases will not be used as precedential, and that exclusion extends to both Demmer dockets. The Demmer Orders, cited by Petitioner as being decisions it wishes to have repeated (Response Brief, p 22), make no precedential contribution to the meaning of the statutory definition. For example, the Demmer dismissal order (Demmer Corp v Delta Corp, unpublished order, MTT Docket No. 228746, entered May 21, 1997), lists five claims under MCL 211.53a, two of which are common to the seven claims of the subject petition. The unpublished Order is not considered helpful as a guide to development of the issue at hand, being absent a recitation of the facts underlying the mistakes, being without statutory analysis, and only referencing a non-precedential quotation from Wolverine Steel.

**d. Examples of mutual mistake from property tax case law.**

Wolverine Steel: The majority opinion in Wolverine Steel provides a good illustration of key elements for mutual mistake analysis. The Appeals Court implemented the [*88] "because of" statutory requirement by identification of an earlier event, the "basic assumption" event constituting the "mutual mistake" (but later found to be of law, not fact) that had a "material effect" upon the assessment and taxes. That primary cause occurred earlier when the taxpayer relied "on information provided to its controller in April 1967 by an auditor from the personal property division of the Board of Assessors of the City of Detroit." Wolverine at 672. The parties had access to, focused upon, and contemplated the same fact, and each arrived at the same mistaken belief concerning that fact--assuming that the personal property was not exempt. Much later, in August 1968, the mutual mistake resulted in the erroneous assessment and payment of taxes. The point at which the mutual mistake had taken place was separate and distinct from the resulting erroneous assessment and tax payment, preceding it as the cause ("because of"), with the effect being for an overage assessment/tax.

Atkinson: Another excellent illustration of cause and effect ("because of") and mutuality, although unpublished, is the Atkinson case, an appellate decision referenced by Petitioner [*89] and discussed earlier in this Order. That case found the Tribunal to have erred in its interpretation of "mutual mistake of fact," thereby presenting an opportunity to view a corrected factual definition. There, the location of a boundary between Detroit and Grosse Pointe Park was found

to be a "basic assumption that materially affected the relationship between the parties." Atkinson at 4. The mutual mistake of fact identified by the Court occurred earlier, it was the primary cause, and was separate and distinct from the resulting assessment and tax collection. The mutually mistaken fact and belief preceded the assessment/tax, and constituted the mandatory "because of" required by the statute. The mutual mistake and the incorrect assessment/tax were not the same.

St. Paul Lutheran Church: This next case provides an example which permits illustration of three important points: (1) that evidence for relief under § 53a clearly demonstrate fact and mutuality in a clear and accurate manner, (2) that the point of "basic assumption" be clearly identified, as an essential qualifying criteria to examining for the clear presence of mutuality as to each parties' contemplation of fact [*90] and belief in forming the mutual mistake, and (3) that discovery of the mistake need not be mutual. These topics are illustrated in a property tax case also mentioned earlier in this document: St. Paul Lutheran Church. That case is not precedentially binding under MCR 7.215(C)(1), although it has been noted by both parties. Petitioner cited the case as an example of the "broad view of the sweep of § 53a recognized by the Michigan Court of Appeals." (Response Brief, p 11). The Tribunal disagrees with that characterization. Respondents noted the case's non-precedential status in a footnote (Motion, p 8, n 2), but drew no other inference.

As background, the case involved an assumed non-wetlands status for vacant acreage, with the valuation, assessment and taxation being premised on that buildable condition. An appeal was filed for relief under § 53a based on the petitioner-having submitted two environmental reports suggesting subject was wetlands, thus presenting basis for an alleged mistaken fact. The Tribunal granted a dismissal motion relative to there being no mistake. The Appeals Court reversed and remanded to the Tribunal for improper consideration of a dispositive motion, noting [*91] the possibility of a mutual mistake regarding the wetland status. After remand and further processing by the Tribunal, the case was dismissed on other grounds. The interesting lessons of this case are not in the unpublished remand order cited by the petitioner, but in the events following remand which created an after-the-fact shadow. The parties' reference to this case prompted the Tribunal to retrieve the file from archived storage for a more thorough understanding of the case's background.

The archived remand file contained the initial two studies submitted with the appeal. The property was being assessed as non-wetland, and those two studies were the basis for the appeal's claim under § 53a that the non-wetlands status was a mistaken belief. The petitioner asserted that the subject land was actually wetlands and not buildable. About three years after the two initial reports, the files show that a new study had been ordered by a third party. A copy of that report came into the respondent's possession and was submitted to the Tribunal in after-remand processing. That new engineering study clearly found the land was not regulated wetlands. The new report performed site perimeter [*92] observations along each of the four boundaries, inquiring as to whether there were any off-site water sources (none were found). The two original reports were less detailed in that regard, and noted only a drainage ditch in one corner. Importantly, the new engineering report also produced an MDNR letter; clearly stating the lands were not subject to wetland regulation. The petitioner countered that the new study raised a question of applicability to the earlier years of the appeal. While the land's wet condition may have changed in the intervening three years, sketches accompanying all three reports were not definitive in that regard, leaving that unanswered question open to speculation. The Tribunal acknowledges that unsettled issue, and that it renders this example less than established fact. In that context, however, the circumstances of this case are still useful to illustrate several points.

What is factually known from the archived file is that the original two reports omitted a critical supporting piece of evidence when compared with the new third report, since neither of the original two reports, although suggesting it, did not produce a ruling from the MDNR in support of [*93] their opinions. The omitted document was essential to producing fact, not mere opinion or speculation. In contrast, the new report was convincingly documented with a current MDNR letter, rendering it, as is now apparent, the only completely supported evidence in the file. This later report certainly casts a serious shadow on the merits of the first two reports, which can now be seen as having failed to gain credibility by omitting the essential MDNR supporting letter. That omission, in effect, gives question to whether any weight should have been given those earlier reports as evidence of factual mistake.

The first learning point, therefore, is that the quality of evidence is critical to making an informed decision on whether a petition should go forward under a § 53a appeal. The Tribunal has need for a sound basis in screening claims filed under § 53a to avoid proceeding under an erroneous premise. In this example, should it be that the original fact (assumed non-wetlands status) was actually the true fact, as the later new report would appear to indicate, then there could have been no mistaken belief, and without a mistaken belief, there is no possibility of a "mutual mistake [*94] of fact." Without a "mutual mistake of fact," there is no jurisdiction under the statute. The importance of quality data accompanying a § 53a appeal is obvious.

The second lesson from this example is to emphasize the importance of correctly identifying the point of mistaken belief, and clearly demonstrating mutuality as to both contemplated fact and mistaken belief. The benefit of an accurate analysis at this point is the rejection of unilateral claims which pass as mutuality. The circumstances of St. Paul Lutheran illustrate the necessity of a simple readily discerned definition of "mutual mistake of fact" being essential to equitable screening of a petition for relief under MCL 211.53a. The Tribunal finds, as has already been well developed, that relief is effected only by an appropriate definition of "mutuality," both as to the fact being mutually recognized, and as to the mistaken belief being mutually held. That construction, the Tribunal believes, is in accord with an informed reading of the statute and, as seen in this illustration, is also an important safeguard against liberalized misuse of statutory relief.

That type of mutuality (fact and mistake) was not the case in [*95] St. Paul Lutheran Church. In this illustration, the procedural flaw of St. Paul was that there was no evidence produced that the point of "basic assumption" had ever been identified, let alone existed. The Tribunal's view, gleaned from the examination of case law discussed earlier, is that a "basic assumption" in this instance would concern whether an observed standing water or wet condition in the center area of the property (shown on all three engineering reports), was a major hazard to construction development, or whether site conditions offered no hindrance to construction. In this example, there was no "basic assumption" because there was no common focus upon a specific fact, and no contemplation of the fact from which the mistaken belief was formed. There was no mutuality evident at that point of decision, where the parties each make a decision whether observed standing water on the property was evidence of normal conditions and not wetlands, and whether the site was buildable. If there were any qualifying events of fact or mistaken belief (there is no such evidence in this case), they would be unilateral. There certainly was no indication of requisite mutuality. Without [*96] mutuality in the development of the "basic assumption" relative to there being no wetlands hindrance to development construction, there could be no mutual mistake of fact, and any later finding of a mistake is moot. The learning of a mistaken belief is applicable only if there had been a previous forming of the mutual assumption of fact.

The third observation illustrated in the St. Paul example pertains to the date when the fact and basic assumption regarding that fact is discovered as being a mutually mistaken belief. It has already been established that the fact must be existent at the time of the mutual mistake and, by definition, the mistake cannot be discovered until after the time the basic assumption was mutually formed. However, those conditions having been met, the date of discovery of the mistake is not critical to defining mutual mistake (although it would bear upon the appeal filing date). As stated in Messerly at 25, n 10, "the date on which a mistaken fact manifests itself is irrelevant to the determination whether or not there was a mistake." The Tribunal would add that mutuality is also not a requirement of defining mutual mistake, although it certainly would [*97] assist in simplifying the evidence in an appeal. Applying these points, the file shows the respondent presented affidavits in St. Paul Lutheran Church that it had no knowledge of a wetlands condition, therefore there was no mutuality. That point would address the lack of mutuality and contemplation in forming a mistaken belief (if there was a mistake), but there is no requirement in either the statute or in case law that there be mutuality in the subsequent discovery of the mistake. Understanding that point, using St. Paul Lutheran Church as an illustration, helps in correctly applying evidence, and in avoiding misdirected analysis.

Concluding, in the Tribunal's opinion, aside from the unpublished case being non-precedential, the circumstances of St. Paul Lutheran Church are unsuited for defining "mutual mistake of fact." The case is suited, however, as an example for illustrating the three topics presented and discussed here, those points being important to understanding mutual mistake, and essential to avoid proceeding in a § 53a appeal under erroneous premises.

**4. Tribunal's Reasoning and Ruling on Respondents' Third Request for Dismissal.**

By way of review, [*98] the substance of Respondents' third dismissal request under MCR 2.116(C)(4) is that Petitioner's special tools exemption claims under MCL 211.53a do not constitute a "mutual mistake of fact," particularly as to "mutuality," and that, absent such qualification, the Tribunal lacks jurisdiction to consider relief. Respondents believe "that the plain language of the statute requires a mistake in which both parties were mistaken concerning the same fact." (Motion, p 8, para 5).

Petitioner's opposition position on "mutuality" was presented earlier (Part III, Section C) as part of a summary of its responses and arguments to the motion's third request for dismissal. Simply stated, Petitioner's position on "mutuality" is that its personal property statements were in error, and that the assessor's use of that inaccurate information fulfilled the mutuality requirement. For ease of reference, a passage presenting Petitioner's view on that topic is quoted here:

> This mistake clearly involves both the taxpayer, which erroneously reported certain items of property, and the assessing officer, who accepted the taxpayer's personal property renditions inclusive of the special tooling mistake contained [*99] therein. Moreover, the special tooling mistake of fact evident here was fully communicated to the assessor, who accepted and expressly relied upon General Products' erroneous personal property renditions in computing the excessive assessments for each affected year. (Response Brief, p 17).
>
> The mutuality requirement of § 53a is more than adequately met in this case by virtue of the facts that General Products, for each of the years in issue, simply furnished the assessing authority with renditions which contained a mistake in reporting exempt special tooling as assessable and taxable property. This was a mistake relative to the nature, character, status or extent of General Products' property, and Respondent accepted and incorporated these mistakes (in effect adopting them as its own errors) in relying upon General Products' renditions in computing its assessments for the contested parcels. Under these circumstances, the requisite "mutuality" is unmistakably established, so that neither Respondent nor Intervening Respondent may properly claim that General Products is not entitled to the relief requested because it has somehow failed to satisfy the mutuality requirement. (Response [*100] Brief, pp 19-20).

To address Respondents' dismissal request and Petitioner's arguments in opposition, it became necessary for the Tribunal to review the defining criteria for "mutual mistake of fact" relief, first from the viewpoint of the statute's terminology, then an examination of the specifications of International Place under the rule of *pari materia*, followed by a review of both contract and property tax case law. Those reasonings and findings, presented earlier in this Section C, concluded in various defining criteria under MCL 211.53a, and provided the basis for a ruling on this, the third and final (C)(4) "lacks jurisdiction" request for partial summary disposition.

**a. The point of primary mutual mistake has not been correctly identified.**

Petitioner's claim of mistake, that the taxpayer filed an erroneous personal property statement, and the assessing officer accepted the erroneous report in assessing the property, is the exact type of faulty reasoning that the Tribunal discussed earlier, and rejected. Circumstances may produce several events involving mistake, but the correct primary event must be chosen, not supplemental or secondary mistakes, to provide [*101] proper inquiry under the statute. The characteristics of that event will be the presence of a "basic assumption" that had a "material effect" on the outcome. It will be that area where mutual fact and mutual mistake coincided, resulting in "material effect" upon the assessment/tax. Once the primary area of likely compliance has been determined, then inquiry may be conducted as to whether the events fulfill qualifications of "mutual mistake of fact."

The circumstance Petitioner attempts to pass off as the true mistake has been incorrectly identified. The personal property form merely points to another type of mistake, secondary in nature, the primary "basic assumption" having occurred elsewhere. That same mistaken logic format appeared in the dissenting opinion of Wolverine Steel at 677, as discussed earlier in this Order. That initial misstep, of incorrect identification, thwarts a proper analysis of § 53a cases, leading to wrong logic, as it did in this matter. Faulty logic at this point will assure a failure to recognize the true mutual mistake, the "basic assumption" which had a "material effect" (Atlas at 750; Atkinson at 4) upon the incorrect assessment and tax payment. [*102]

The majority opinion in Wolverine Steel demonstrated the manner of correctly identifying the true mutual mistake as an earlier event, a focal point at which the taxpayer and an auditor of the Board of Assessors formed an erroneous opinion concerning an exemption. Wolverine at 672. As it turned out, the majority opinion properly identified the primary event as an essential step preparatory to examination of the qualifying characteristics. They found mutual mistake had occurred, but further determined the mutual mistake was one of law, not of fact. Wolverine at 673-674. Similarly, the Atkinson case, although non-precedential, presents a second example of the manner in which the "basic assumption" is identified, in that case being a mutually mistaken belief regarding the factual location of a community boundary. The mutuality in Messerly consisted of both parties having focused upon the same data, from which they both formed a mistaken belief concerning a fact, and that basic assumption had a material effect upon their actions. The Court found that: "All of the parties erroneously assumed that the property transferred by the vendors to the vendees was suitable for [*103] human habitation and could be utilized to generate rental income." Messerly at 30. It is important to note that the mutual mistake of fact was not in the land contract, and not even in the adequacy of the septic system. It was even more basic than that, being mistaken assumptions regarding "suitable habitation" and ability of the property to "generate rental income." The land contract was merely the summary culmination of earlier events.

Using these examples in a parallel sense, mutual mistake is no more embodied in the Messerly land contract, or the incorrect assessment/taxes paid in Wolverine Steel and Atkinson, than it was in the misreported filings of Petitioner's personal property statements. In the Messerly case, it resided in the basic underlying assumption, relative to habitability and income production, which had a material effect upon the representations of the land contract. In Wolverine Steel, the mistake had occurred earlier in the form of a mutually mistaken belief concerning an exemption. In the Atkinson case it resided in the earlier assumptions regarding the location of a municipal boundary. All of these mutual mistake examples are characterized [*104] by an earlier primary cause. Similarly, in the subject case, if there were a mistake, it would not reside in the personal property statement, that being a mere codification of the alleged errors, an event peripheral to the resulting alleged incorrect overage assessment and payment of taxes. As seen in Messerly, Wolverine Steel, and Atkinson, the mutual mistake resided much earlier at the basic assumption level. In the subject case, if there were mistakes of a basic sort, they would be found where Petitioner reviewed its tooling data, contemplating and drawing such conclusions as it believed correct at the time, those acts then having a material effect upon the erroneous assessment/tax in the subject instance.

The Tribunal concludes that, on this aspect alone, the misidentification of the point of alleged mutual mistake, Petitioner's claims fail, since any analysis of the incorrect mistake can only produce an invalid result. Its case being based upon the wrong event as its claim of mutual mistake of fact leaves Petitioner without relief under § 53a of the statute. In the next section, it will be seen that, even if there were mistake regarding the special tools (an unproven [*105] but moot issue), Petitioner's claim further fails in meeting the definition of mutual mistake of fact, in that its actions of "basic assumption" were entirely unilateral.

**b. Petitioner's actions were entirely unilateral, failing to provide requisite mutuality in fact and mistake.**

First, looking at the personal property filing, aside from the fact that it failed to qualify as the point of "basic assumption," there was no common awareness (mutuality) of material fact, and no mutuality in mistake. The claimed errors of the personal property statement did not qualify as either the fact basis or the mistake basis, in fulfilling the requirement of "material effect." The mutual fact, and mutual mistake, would not be the entries on the personal property statement, since those entries were merely the summary statements of the data and possibly mistaken belief resulting from an earlier activity of "basic assumption." The assessor only received the result. In short, the personal property statement was merely a recording of the conclusions of the mistaken fact process, not the process itself. The assessor had no access to the fact basis, at least as to that information which was material, [*106] and had no knowledge of the process of forming the "basic assumptions" of the mistaken beliefs. The activities involved were entirely within the knowledge and possession of Petitioner, and not revealed or made known to the assessor at the point at which the "basic assumption" was being formed. Therefore, those critical aspects were entirely unilateral. Under the circumstances of this case, there can be no mutuality at the level of a personal property statement filing.

Having eliminated the personal property statement as the probable point of "basic assumption," the areas of fact and mistake would most likely be found earlier, as was learned from previously discussed examples in Messerly, Wolverine Steel, and Atkinson. In this case, the Tribunal identified that location as the point where, for the first time of "basic assumption," the underlying information or database relative to the special tools, and the decision-making process, merged in a decision that the items classified as special tooling were to be treated as assessable and taxable property. Those areas of activity were performed prior to delivery of the conclusory personal property statement, and they were [*107] performed by General Products. Importantly, those actions were unilateral, not mutual.

That the analysis of data and formation of decisions resulting in the "basic assumptions" from which flowed the alleged mistaken belief were entirely those of Petitioner, and not mutual in any respect, is a conclusion of the Tribunal resulting from these evidences:

**i.** Neither Respondents' Motion and Petitioner's Response, nor the Tribunal's voluminous file, offer any evidence that there was mutuality at the time when the "basic assumption" was developed--that is, as identified by the Tribunal, the time where the material facts were evaluated and the mistaken belief formed in preparation for drafting the personal property statements. Respondents were not involved in mutual actions at that time.

It is evident from the record that Respondents have not, either together with Petitioner or independently, performed any acts of "basic assumption," since they would have needed access to material portions of Petitioner's underlying documentation relative to special tooling facts (such as identification, manufacturer, cost, age, function, condition, book depreciation, useful life product run). Respondents [*108] did not gain access to the data necessary to evaluate the hundreds of separate items of tooling until it was delivered as the result of (somewhat contentious) discovery. Without mu-

tual contemplation of material data at the time of "basic assumption," no mistaken mutual beliefs could be formed regarding taxable status versus exempt status.

Petitioner acted alone in those "basic assumption" functions prior to the time of, and in preparation for, drafting and the subsequent delivery of the personal property statements, with Respondents being distinctly absent from corresponding functions. Those acts of Petitioner were performed well before the filing of the personal property statement, were solely those of General Products and its personnel, and were not a "mutual mistake of fact made by the assessing officer and the taxpayer." In fact, Petitioner's petition filed in this appeal makes no factual statement that the assessor was aware of the underlying facts and allegedly mistaken belief prior to the filing of the personal property form. Petitioner acted unilaterally.

**ii.** Petitioner's own admission makes clear that Petitioner holds an erroneous view that the filing of the personal [*109] property statement is the point of mistake, a view fatal to its claims in that it acknowledges there was no mutuality at the time the "basic assumption" was being formed. Petitioner's position relative to special tools, states (Response Brief, p 3): "As concerns this category of mistake, General Products, in filing its personal property renditions with Respondent Leoni Township for certain years, mistakenly reported items of special tooling which were not properly reportable as taxable tangible personal property . . . (references omitted)." That statement is an admission that Petitioner has misidentified the true point of "basic assumption" in this matter. The true point occurred much earlier, as already noted, and was one of unilateral activity.

**iii.** Petitioner's Response Brief attached Exhibit C, the "Affidavit of Barbara Batway." Ms. Batway is identified as the Controller, Assistant Controller, and Financial Analyst for General Products. (Affid, item 2). She attested to having personal knowledge of the "Company's documentation relating to tangible personal property on site." She also attested to having filed personal property renditions with Leoni Township, and having "determined [*110] that a number of mistakes were made in reporting the Company's tangible personal property . . ." (Affid, item 3). Ms. Batway identified the mistakes as those seven categories (inclusive of the special tools exemption) listed by the Tribunal earlier, being the same seven listed in the petition. She refers to the "mistakes made in reporting" as "those more precisely categorized and identified in the *Tabulated Personal Property Schedule* filed with the Tribunal in June, 1998." (Affid, item 4). From this Affidavit, it is reasonable to summarize that the mistakes at issue, including the special tools exemption, were derived from General Products' own documentation, that the mistaken beliefs were those of General Products, that those acts were of Petitioner since no participation of the opposing party was identified at that stage, and that the mistakes preceded the erroneous personal property report. The evidence is clearly unilateral, not mutual.

In conclusion, having considered the statute, the facts, the case law, the parties' arguments, and the specific findings discussed above, the Tribunal finds there to be merit to grant this third of Respondents' three dismissal requests, [*111] "the Tribunal lacks jurisdiction." There is no evidence of mutuality, neither as to facts referenced in common from which a mistaken belief could be formed, nor in the formation of a common mistaken belief. Petitioner's special tools exemption claim of "mutual mistake of fact" fails to qualify for relief under MCL 211.53a. Absent that qualification, the Tribunal has no jurisdiction in this manner.

Therefore,

**ORDER THREE: IT IS ORDERED that Respondents' third of three requests for dismissal of the special tools exemption claim, pursuant to MCR 2.116(C)(4) for lack of Tribunal jurisdiction, is GRANTED, as generally premised on the finding that the special tools exemption claim fails to qualify for relief as a "mutual mistake of fact" pursuant to MCL 211.53a, and particularly fails as to the absence of mutuality regarding the material facts and mutually mistaken belief concerning those facts.**

## V. TRIBUNAL *SUA SPONTE* REVIEW OF REMAINING SIX ISSUES OF CASE FOR JURISDICTION UNDER MCL 211.53a

### A. The Petition Contended Seven Mistakes.

The petition in the matter of Docket No. 249550 stated that the incorrect assessments and excessive payment of taxes resulted from [*112] multiple "mutual mistakes of fact" that were embodied in an incorrect reporting on the personal property statement. Those multiple "mutual mistakes of fact" listed in the petition were alleged to consist of: (1) failure to recognize exemption of "special tooling" under MCL 211.9b; (2) the incorrect reflection of the year of acquisition; (3) the erroneous inclusion of property that had been disposed; (4) failure to recognize that computer equipment had been misreported as general equipment or furniture; (5) certain application software had been erroneously reported

as taxable tangible personal property; (6) certain property had been misidentified as other than Industrial Facilities Tax (IFT) property; and (7) the cost of raw material inventory and building improvements had improperly been included in personal property.

**B. The Dismissal Motion Addressed One of the Seven Claims of Mistake.**

The reasoning and rulings of Part IV, Sections B and C of this Order, pertained to Respondents' "Motion for Partial Summary Disposition," claiming that the personal property statement listed "special tooling" as taxable property, whereas it should be recognized for exemption under MCL 211.9b. [*113] The special tools claim was listed as number one of the seven alleged mistakes specified in the petition and itemized in the first paragraph above. In review of the matter, the Tribunal found merit in that part of Respondents' dispositive motion requesting dismissal for there being lack of jurisdiction under MCL 211.53a. Granting of the motion left six other § 53a claims for "mutual mistake of fact" still active under Docket No. 249550.

**C. The Remaining Six Claims of Mistake.**

During the course of researching and deciding Respondents' Motion on special tools, it became apparent that all findings, with one exception, had significant pertinence to the remaining six claims. The remaining six claims were observed to possess identical issues in claiming relief as "mutual mistakes of fact" under MCL 211.53a. In fact, the question of jurisdiction for the six remaining claims is identical to the special tools exemption claim which was dismissed under the reasoning and rulings of Part IV, Section C of this Order regarding failure to meet the qualifying criteria of "mutual mistake of fact," particularly as to mutuality.

As clarification, this Order's discussion at Part IV, Section [*114] B, where the Tribunal found the special tools claim to be a matter of law, not mistaken fact, does not pertain to the remaining six claims. None of the remaining six claims involve mistakes of law, all being claims of factual mistake. Therefore, the findings of Section B relative to the special tools being a claim of exemption, and exemption claims being mistakes of law, are not relevant to the remaining six claims of factual mistake under evaluation here in Part V.

As an additional clarifying note regarding exemptions, one of the six remaining claims does regard an Industrial Facilities Tax (IFT). Matters of IFT are granted under an Industrial Facilities Exemption Certificate. Despite the word "Exemption" in the certificate's title, IFT's are considered by the Tribunal to be an abatement of ad valorem tax, not an exemption in the same sense as a special tools exemption. Finally, Section B also discussed the exclusion of claims referenced in case law (Wolverine at 674) that were "generically different" from those mistakes and errors intended by the statute, and the Tribunal finds that none of the remaining six claims fall within that exclusion. Accordingly, all six claims are considered [*115] as allegations of factual mistake, which falls squarely within the earlier discussion, analysis and findings of Part IV, Section C.

**D. All Seven Claims Contend Identical Premise as Basis for Relief.**

All seven claims of the petition filed in this matter, consisting of that one claim on special tools pertaining to the motion, and the remaining six being discussed here, were made in the aggregate under the same petition (see copy of petition as attachment to Motion, Tab A, para 15-21), and filed under Docket No. 249550. All seven claims involved the same parties, were for the same years, shared the same motions to amend for subsequent years, and requested relief under MCL 211.53a as "mutual mistakes of fact." Except as to the varying types of the remaining six alleged mistakes, all other factors discussed in Part IV, Section C, relative to special tools (except as to mistake of law) are relevant to the remaining six claims.

Importantly, all seven claims identified the personal property statements as having been erroneous reportings by Petitioner, and all seven are based on the same assertion that mutual mistakes were in the filing and acceptance of the erroneous personal property [*116] statements. That Petitioner asserts this same contention of mistake as uniformly applicable to all seven claims is clear from the reply in "Petitioner's Answers to Respondents' First Interrogatories to Petitioner," dated June 1, 1998, Interrogatory No. 70 (see copy as attachment to Motion, Tab B, p 39). Respondents' Interrogatory No. 70 asks Petitioner to describe in detail "the definition of mutual mistake upon which Petitioner relies." The Answer provides that definition:

> Petitioner does not allege "a" mutual mistake of fact, but instead has established that many mutual mistakes of fact have occurred with respect to its personal property assessments for 1994, 1995, 1996, and 1997, see E & Y's Backup Data Book. Both parties were mistaken as to the propriety of the reporting of certain items of property for the years in question. . . .

**E. All of Petitioner's Seven Claims of Mistake Fail for Lack of Mutuality and Other Qualifying Criteria of "Mutual Mistake of Fact."**

Petitioner's definition, quoted from Interrogatory No. 70, and pertaining to all seven claims, is the same definition used in the Response to Respondents' Motion on the special tools claim. It is clear [*117] that the above definition goes to the issue of jurisdiction for all seven claims of mistake in this matter; that all seven claims of mistake are identical in their reliance upon Petitioner's definition of "mutual mistake of fact." That very same definition was thoroughly reviewed in Part IV, Section C, was found to be without merit, and was the basis for dismissal for lack of jurisdiction. Application of the special tools finding to the remaining six claims may not be ignored.

The outcome of these observations is obvious, but before concluding this matter, there is one additional note that arises from the Interrogatory Answer quoted above. The Interrogatory Answer makes reference to "E & Y's Backup Data Book." That reference deserves clarification. The "E & Y Backup Data Book" is a summary document of conclusions, without supporting facts, analysis, or reasoning, prepared by Petitioner's accountants, Ernst & Young (E & Y), for this appeal. A copy was furnished the Tribunal and Respondents after the appeal was filed in 1997. The actual work of E & Y is protected in this matter by Petitioner's assertion of accountant-client privilege pursuant to MCL 339.732(1). While the work and counsel [*118] of E & Y remains protected, most of the file documents of General Products relative to the petition's claims, are not protected, and were delivered under discovery. The more notable of those discovery deliveries included approximately 19,000 pages of documents served on July 14, 1999, and another 2,382 pages on August 19, 1999.

These discovery documents pertained to the hundreds of items involved in the six remaining claims of mistake. In that they had been solely in the possession of Petitioner prior to the filing of appeal with the Tribunal, and not in possession of Respondents until almost twenty-two months after the petition was filed, it appears obvious that there could not possibly have been mutual access to the facts underlying the multiple claims of mistake. Without each party having common access to the documents, or at least Respondents sharing some part of the data that would constitute material evidence, there is no mutual database. That mutual database, or a material part of it, would need to be made available for the review and contemplation of the parties at the point of "basic assumption," which point of time was discussed in Part IV, Section C, such that a mistaken [*119] belief could be formed concerning each of the hundreds of items of mistake.

Without these qualifying factors of the "basic assumption" being present at the appropriate point in time, mutuality would be missing on both points of fact and mistake. As discussed earlier in depth, the word "mutual" means "common to both parties; interchangeable; reciprocal," and the word "common," applicable to that used in the definition, means "shared among several." The phrase "mutual mistake" carries the meaning of being "one common to both or all parties, where each party labors under the same misconception . . ." Black's Law Dictionary, Abridged Sixth Edition (1991). In this case, there was nothing shared, nothing in common, at the time when Petitioner was unilaterally reviewing its data and making its assumptions. Without mutual facts and mutual mistake, there can be no "mutual mistake of fact" in this matter.

The extensive discussion and reasoning presented earlier, resulting in the Tribunal's support for application of "mutual mistake of fact" under provisions of MCL 211.53a, is easily referenced and need not be repeated here relative to the six remaining claims. In summary terms, the Tribunal's [*120] finding is that the fact or facts upon which the erroneous belief is based must be an identifiable thing common to both parties' knowledge and awareness, be within the contemplation of each party, be a "basic assumption" material to the mistake--and that each party arrive at a substantially identical but erroneous conclusion based upon that material fact or set of facts, and that the mistaken fact was the primary cause of, and had a "material effect" upon, the over-assessment and excessive tax payment.

Further, the Tribunal concluded that relief under MCL 211.53a was intended by the legislature to be equally specific and limited in scope as was "clerical error" under MCL 211.53b pursuant to the Tribunal's analysis of International Place under the rule of *pari materia*. Petitioner's contention of "mutual mistake of fact," as to each of the remaining six claims of mistake, fails to qualify for relief under MCL 211.53a.

**F. Dismissal of Remaining Six Claims.**

Accordingly, on the Tribunal's own initiative, it has reviewed the remaining six claims of the petition, and concludes there is an absence of jurisdiction. That conclusion is based on the reasoning found in Part IV, [*121] Section C, of this Order relative to special tools being applicable to these six remaining claims. The remaining six claims possess the identical aspects of failure in meeting the criteria of "mutual mistake of fact" under MCL 211.53a, as did the special tools claim in failing to meet the criteria for "mutual mistake of fact" under MCL 211.53a. Thus, the Tribunal adopts Part IV, Section C, in its entirety for development of qualifying criteria, and further adopts the reasoning and rulings of Part IV, Section C, Subsection 4, as applicable to the six remaining claims of the petition.

The adoption of those same earlier findings as applicable to the remaining six claims of "mutual mistake of fact," culminates in the Tribunal's instant *sua sponte* Order Four dismissing those remaining six claims of mistake. Therefore, the Tribunal, being without jurisdiction for the remaining six claims of the petition, must also dismiss those remaining six issues. Absence of jurisdiction would preclude any further processing of those six claims, making dismissal mandatory under Fox at 242.

Therefore,

**ORDER FOUR: IT IS ORDERED, *sua sponte*, that Petitioner's remaining six claims of mistake** [*122] **in this matter are DISMISSED for lack of Tribunal jurisdiction, as generally premised on the finding that those claims fail to qualify for relief as "mutual mistakes of fact," pursuant to MCL 211.53a, and particularly fail as to the absence of mutuality regarding the material facts and mutually mistaken belief concerning those facts.**

**VI. SUMMARY FINAL ORDER DISMISSING ALL CLAIMS FOR LACK OF JURISDICTION, AND CLOSING CASE ON DOCKET NO. 249550**

**A. Review of Prior Orders.**

The subject matter of Respondents' Motion was whether Petitioner's claim of "special tools" exemption qualified for relief under MCL 211.53a as "mutual mistake of fact." The Tribunal discussed that issue from several viewpoints. In Part IV, Section B, the Tribunal found that a matter of exemption was one of law, not fact, thereby failing to qualify for relief under the statute, warranting dismissal of the special tools claim for lack of jurisdiction. Next, in Part IV, Section C, dismissal was also warranted, in that the Tribunal found Petitioner's special tools claim failed again, its case being based on misplaced identification of the mistake and, further, that the circumstances of this matter [*123] were absent qualifying criteria for "mutual mistake of fact," particularly as to mutuality.

The special tools exemption, as the subject of Respondents' Motion, was only one of the seven types of "mistake" alleged by Petitioner in filing its petition for relief before the Tribunal. The remaining six claims of "mistake" were addressed in Part V at the Tribunal's own initiative, necessitated by results of the legal research and reasoning that issued from the preceding jurisdictional examination of the dispositive motion. That Part V examination found the six remaining claims to lack merit for the same failures to meet the appropriate qualifying criteria of "mutual mistake of fact" as were evident in the special tools issue (except that the issue of law versus fact of Part IV, section B, was not applicable). The result of that inquiry in Part V culminated in the Tribunal's *sua sponte* Order of dismissal of those six remaining claims for lack of jurisdiction.

**B. Summary Final Order Closing Case.**

Finally, this Section VI provides a Summary Final Order of Dismissal, issued in accord with the findings and rulings of the prior sections, making clear that the sum of all Orders herein [*124] result in the closing of the entire "mutual mistakes of fact" case of Docket No. 249550 for lack of Tribunal jurisdiction under MCL 211.53a.

Therefore,

**ORDER FIVE: In summary of all preceding Orders, IT IS ORDERED that the Tribunal, having found Petitioner's claim of "mutual mistake of fact" for special tools, requesting relief pursuant to MCL 211.53a, failed for lack of jurisdiction as ruled in Part IV; and the Tribunal having found Petitioner's remaining six claims of "mutual mistake of fact" for other varied perceived mistakes, requesting relief pursuant to MCL 211.53a, failed for lack of jurisdiction as ruled in Part V; thereby, the result of which is a DISMISSAL in the aggregate of all claims, CLOSING THE CASE for MTT Docket No. 249550.**

**C. No Provision in Order Allowing Costs.**

Tax Tribunal Rule (TTR) 145 provides that costs may be awarded only when provided for by the Tribunal in a decision or order. In this matter, no costs are allowed, in that a detailed examination of the meaning of MCL 211.53a terminology relative to "mutual mistake of fact" had not previously been available for reference.

Entered: MAR 8 2001
RCM:249550.or14

# EXHIBIT

# C

# STATE OF MICHIGAN

# COURT OF APPEALS

GENERAL PRODUCTS DELAWARE CORPORATION,

Petitioner-Appellant, Cross-Appellee,

v

LEONI TOWNSHIP,

Respondent

and

JACKSON COUNTY,

Intervening-Respondent-Appellee, Cross-Appellant.

UNPUBLISHED
May 8, 2003

No. 233432
Tax Tribunal
LC No. 00-249550

Before: Murphy, P.J., and Owens and Schuette, JJ.

PER CURIAM.

In this Tax Tribunal case, petitioner, General Products, appeals the Tax Tribunal's grant of partial summary disposition based on MCR 2.116(C)(4) and intervening-respondent, appellee Jackson Township appeals the Tax Tribunal's denial of its motion for summary disposition based on MCR 2.116(C)(10). We affirm.

## I. FACTS

This case arises from the September 15, 1997 petition filed by petitioner with the Michigan Tax Tribunal regarding the 1994-1997 tax years. Petitioner is a Delaware Corporation that manufactures various automobile parts.

Petitioner filed the petition seeking to recover a portion of the personal property taxes paid to Leoni Township believing that it had made an overpayment. The petition alleged that when petitioner prepared its personal property statements, and then filed them with Leoni Township, it overpaid due to seven "mutual mistakes of fact" involving distinct categories of property. Specifically, petitioner alleged the following were "mutual mistakes of fact:" (1)

various types of personal property were misidentified as to their year of acquisition; (2) assets that had been disposed of were reported and taxed as if still owned or possessed by General Products; (3) exempt special tools were taxed; (4) various types of personal property were reported and/or taxed in the wrong property classification; (5) computer software was misclassified as taxable personal property; (6) exempt industrial facilities personal property was misclassified and taxed; and (7) certain real property consisting of raw materials and building improvements were misclassified and taxed as personal property.

Leoni Township utilized the information provided by petitioner on its personal property statements, resulting in the alleged incorrect assessments. After petitioner filed its petition with the Tax Tribunal, intervening-respondent-appellee Jackson County filed a motion to intervene in the proceeding.[1] The Tax Tribunal granted the motion to intervene.

On September 25, 1998, respondent and Leoni Township filed motions for partial summary disposition for claims involving the special tools exemption (one of the seven categories alleged by petitioner to involve mutual mistakes of fact). On March 8, 2001, the Tax Tribunal issued its orders.

First, the Tax Tribunal denied respondent's motion for summary disposition pursuant to MCR 2.116 (C)(4) and (C)(10) based on respondent's allegations that no genuine issue of material fact existed regarding the useful life of special tools. This decision is the basis for respondent's cross appeal.

Second, the Tax Tribunal granted respondent's motion for summary disposition relating to the issue of mutual mistake of fact alleged to have occurred in the special tooling exemption. The Tribunal determined that a taxable status exemption issue under a MCL 211.53a claim is an issue of law, and not an issue of fact. As a result, the Tax Tribunal reasoned it lacked jurisdiction in this matter.

Third, the Tribunal determined that petitioner did not satisfy the criteria for mutuality of mistake of fact. The Tribunal determined that in the present case, the mistake was unilateral because it occurred at a point in time before petitioner filled out its personal property statements and there was never a common mistaken belief. Thus, the Tribunal stated that it lacked jurisdiction pursuant to MCL 211.53a, which requires a mutual mistake of fact.

Finally, the Tax Tribunal sua sponte dismissed petitioner's remaining six claims regarding the other categories of property that it alleged were subject to mutual mistakes of fact. The Tribunal found that the remainder of the claims possessed identical issues regarding "mutual mistake of fact" and that the Tribunal lacked jurisdiction pursuant to MCL 211.53a.

## II. STANDARD OF REVIEW

Although we generally review the grant or denial of summary disposition de novo, *Spiek v Dep't of Transportation,* 456 Mich 331, 337; 572 NW2d 201 (1998), "review of a decision by

[1] Intervening respondent Jackson County is the appellee in this matter and will be referred to as either respondent or appellee throughout. Leoni Township is not an appellee and although is the original respondent, will be referred to as Leoni Township throughout.

the Tax Tribunal is limited to determining whether the tribunal erred in applying the law or adopted a wrong principle; its factual findings are conclusive if supported by competent, material, and substantial evidence on the whole record." *Michigan Bell Telephone Co v Dep't of Treasury,* 445 Mich 470, 476; 518 NW2d 808 (1994). While provisions that exempt a taxpayer from a taxing statute must be construed in favor of the taxing body, "imposition provisions of a taxing statute should be construed in favor of the taxpayer." *Evanston YMCA Camp v State Tax Comm,* 369 Mich 1, 7; 118 NW2d 818 (1962).

"When reviewing a motion for summary disposition under MCR 2.116(C)(4), this Court must determine whether the pleadings demonstrate that respondent was entitled to judgment as a matter of law, or whether the affidavits and the proofs show that there was no genuine issue of material fact." *Sun Communities v Leroy Twp,* 241 Mich App 665, 668; 617 NW2d 42 (2000).

## III. ANALYSIS

### A. Mutual Mistake of Fact under MCL 211.53a

Petitioner argues that the Tax Tribunal erred in granting respondent's motion for summary disposition based on the Tribunal's finding that it lacked jurisdiction pursuant to MCL 211.53a because of the absence of a mutual mistake of fact. We disagree.[2]

MCL 211.53a provides for recovery of excess payments not made under protest. It states:

> Any taxpayer who is assessed and pays taxes in excess of the correct and lawful amount due because of a clerical error or mutual mistake of fact made by the assessing officer and the taxpayer may recover the excess so paid, without interest, if suit is commenced within 3 years from the date of payment, notwithstanding that the payment was not made under protest.

The Restatement (First) of Restitution, § 6 Mistake (1937) defines a mistake as a "state of mind not in accord with the facts." It goes on to state, "There may be ignorance of a fact without mistake as to it, since mistake imports advertence to facts and one is ignorant of many facts as to which he does not advert." Here, the assessor based the assessment on the personal property statement, thus he was ignorant of the real facts and did not have a state of mind that allowed for a mutual mistake of fact.

"Mutuality" is defined in Black's Law Dictionary (7th ed) as:

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[2] We decline to address petitioner's first issue on appeal. Petitioner argues that the Tax Tribunal erred when it granted respondent's motion for summary disposition pursuant to MCR 2.116(C)(4) stating that the Tribunal lacks jurisdiction because an exemption or taxable status claim is a mistake of *law* and does not fall within the purview of MCL 211.53a, which requires a mutual mistake of *fact.* Our determination that summary disposition was properly granted based on the absence of a mutual mistake of fact is dispositive and makes review of petitioner's first issue unnecessary.

The state of sharing or exchanging something; a reciprocation; an interchange.

Here there was no mutuality because petitioner's mistake was based on its incorrect inventory and analysis of its property. The assessor's mistake was based on petitioner's representations on its personal property statement. Thus, there was a different basis for each of the two mistakes made. The nature of the taxation system and the sheer number of businesses that pay taxes do not allow each assessor to individually check each of petitioner's representations on its personal property statement. Petitioner argues that by accepting this statement, the assessor is adopting it as his belief and should be deemed to have made the same mistake as the petitioner. However, this is contrary to the plain meaning of the term "mutual mistake" of fact. In essence, petitioner is asking that its unilateral mistake be imputed to the assessor and reclassified as a mutual mistake of fact.

Statutory language should be construed reasonably, keeping in mind the purpose of the act. *Draprop Corp v Ann Arbor*, 247 Mich App 410, 415; 636 NW2d 787 (2001). Nothing will be read into a clear statute which is not within the manifest intention of the Legislature as derived from the language of the statute itself. *Roberts v Mecosta County General Hospital*, 466 Mich 57, 63; 642 NW2d 663 (2002). The fair and natural import of the terms employed, in view of the subject matter of the law, should govern. *In re Wirsing*, 456 Mich 467, 474; 573 NW2d 51 (1998). Unless defined in the statute, every word or phrase of a statute should be accorded its plain and ordinary meaning, considering the context in which the words are used; technical terms are to be accorded their peculiar meanings. *Robertson v Daimler Chrysler Corp*, 465 Mich 732, 748; 641 NW2d 567 (2002). The manner in which petitioner wishes to construe the language of this statute is unreasonable, particularly in light of case law as will be discussed *infra*. The plain meaning of the term "mutual mistake" is not satisfied where the mistaken belief of one party must be imputed to the other and is not an actually held belief.

1. Property Taxation Law Cases

Michigan case law provides very little assistance in the form of prior decisions addressing the definition of "mutual mistake of fact" under MCL 211.53a.

In *Wolverine Steel Co v City of Detroit* 45 Mich App 671, 674; 207 NW2d 194 (1973), although the Court ultimately determined that the case involved an issue of law, and not fact, the Court did make a brief "mutual mistake" analysis. The Court determined that mutual mistake had indeed been made, where the parties had access to, focused upon and contemplated the same fact and then each arrived at the same mistaken belief concerning that fact. Much later, the erroneous belief resulted in the incorrect assessment and payment of taxes. However, in this case the error was not based on an earlier, primary mistake made by *both* parties based on the same facts, instead, it was based on a mistake made by petitioner alone in its preparation of its personal property statement.

We note that petitioner asserts that the following statement of the *Wolverine Steel* Court should be interpreted so as to support its position that a the circumstances of this case satisfy the mutual mistake of fact criteria,"[w]e believe § 53a alludes to questions of whether or not the taxpayer had listed all of its property, or listed property that it had already sold or not yet received, etc." Id. at 674. However, this comment is dicta where the ultimate decision in the case turned on whether the mistake was one of fact or law. Although the determination that

mutual mistake occurred in the case was also dicta, the particular statement that petitioner urges this Court to follow is inconsistent with other case law involving mutual mistakes of fact and is somewhat vague in that it suggests that MCL 211.53a is available to both taxpayers and assessors (when it is only available to taxpayers). Thus, this statement does not provide instruction on the interpretation of "mutual mistake of fact" under MCL 211.53a.

2. Contract Law Cases

We believe that the Tribunal properly cautions against the use of contract-based case law and the definitions of "mutual mistake" contained within because there is an element of equity in contract law that that is not present in property tax law. Our Supreme Court noted in *Spoon-Shacket Co, Inc v Oakland County,* 356 Mich 151, 171; 97 NW2d 25 (1959), that "governmental powers of taxation are controlled by constitutional and statutory provisions. . . it is not possible to adjudicate issues arising under taxation laws by the general application of equitable principles."

However, some of the general principles and terminologies regarding what constitutes a "mutual mistake" of fact are helpful in resolving this issue. The Tribunal presented three contract cases which provide some instruction on the types of situations that support a finding of mutual mistake of fact.

In *Harris v Axline,* 323 Mich 585, 588; 36 NW2d 154 (1949), a buyer and seller entered into a land contract sale. Before the purchase, the agent of the seller and the buyer paced off the 40-foot frontage and confirmed the land description described in the title. After the purchase, a survey revealed that a 6-foot portion of the frontage was owned by the City of Lansing. Our Supreme Court found that this was a mutual mistake of fact because both parties were mistaken as to the actual lot size. Both parties had access to the same facts when they concluded that the frontage was 40 feet. In contrast, both parties in this case did not have the same information. Petitioner had the property in its possession and it made its determination based on that information. Respondent had only the report of petitioner on which to base its assessment. Thus, unlike in *Harris*, the facts of this case do not indicate that there was mutuality of both fact and belief because the cause and effect were not contemporaneous.

In *Gordon v City of Warren Planning and Urban Renewal Commission,* 388 Mich 82, 89; 199 NW2d 465 (1972), a planning consultant incorrectly drafted a site plan and indicated that a road was narrower than it actually was. Later, the plaintiffs sought approval for a multiple dwelling project and entered into a site plan approval agreement with the city pursuant to litigation on the matter. The judgment incorporated the error in the site plan by reference. Once building of the project commenced, the error was discovered. On appeal, our Supreme Court found that both plaintiffs and defendant honestly and in good faith believed that the site plan was proper and that the agreement worked out by the parties could be fulfilled and held that there was a mutual mistake of fact which occurred in the original judgment entered by the trial court. *Id.* at 89. Mutuality occurred because both parties relied at the same point in time on the erroneous site plan. The mutual mistake of fact did not occur when the planning consultant made the error and provided the site plan to the parties (similar to the facts of this case), it occurred when both parties believed the plan to be accurate and allowed it to be incorporated into the judgment.

In *Lenawee County Bd of Health v Messerly* 417 Mich 17, 30-31; 331 NW2d 203 (1982), an apartment complex was sold on a land contract. It was later determined that the septic system was inadequate and incurable. Neither party knew of the problem before the sale because the system had been installed by a previous owner. The purchaser examined the property. The court stated:

> All of the parties to this contract erroneously assumed that the property transferred by the vendors to the vendees was suitable for human habitation and could be utilized to generate rental income. The fundamental nature of these assumptions is indicated by the fact that their invalidity changed the character of the property transferred. *Id.* at 22.

In the *Lenawee County Bd of Health* decision the mutual mistake of fact was in the basic assumption that the land was suitable for use as an apartment complex and for habitation by humans. The *Lenawee County Bd of Health* decision did not involve one party making a mistake and then providing erroneous information to the other party, who relied on that incorrect information. It was a case where both parties made an identical assumption based on identical information.

These three contract cases provide guidance as to the meaning of the doctrine of mutual mistake. The parties must have a shared mistaken belief regarding a fact which constitutes a basic assumption underlying the contract. The nature of the mistakes that qualified as mutual mistakes of fact in the above mentioned contract law cases (unlike the present case) was that they all involved mutuality and in all three cases the parties made their mistakes based on the same information.

3. Statutory Interpretation

Petitioner argues that the Tribunal erred when it applied the doctrine of *in pari materia* to its analysis of MCL 211.53a when it incorporated the limiting language found in MCL 211.53b into its interpretation of MCL 211.53a.

If two or more statutes arguably relate to the same subject or have the same purpose, they are considered in pari materia and must be read together to determine legislative intent. *People v Webb,* 458 Mich 265, 274; 580 NW2d 884 (1998); *State Treasurer v Schuster,* 456 Mich 408, 417; 572 NW2d 628 (1998), quoting *Detroit v Michigan Bell Telephone Co,* 374 Mich 543, 558; 132 NW2d 660 (1965). The purpose of the in pari materia rule is simply to assist this Court in interpreting the Legislature's intent. *Webb, supra.* Statutes relate to the same subject if they relate to the same person or thing or the same class of persons or things. *Empire Iron Mining Partnership v Orhanen,* 455 Mich 410, 427; 565 NW2d 844 (1997), quoting *Detroit, supra* at 558. Statutes need not be enacted at the same time or even refer to each other to be read in pari materia. *State Treasurer, supra; Travelers Ins v U-Haul of Michigan, Inc,* 235 Mich App 273, 279; 597 NW2d 235 (1999).

211.53b provides in pertinent part:

> If there has been a clerical error or a mutual mistake of fact relative to the correct assessment figures, the rate of taxation, or the mathematical computation relating

> to the assessing of taxes, the error or mutual mistake shall be verified by the local assessing officer, and approved by the board of review. . . . If the error or mutual mistake results in an overpayment or underpayment, the rebate shall be made to the taxpayer or the taxpayer shall be notified and payment made within 30 days of the notice. A correction under this subsection may be made in the year in which the error was made or in the following year only. MCL § 211.53b(1)

In *International Place Apartments IV v Ypsilanti Township,* 216 Mich App 104, 108, 548 NW2d 668 (1996), this Court applied MCL 211.53b and determined that it did not apply to allow correction of an assessment which did not include some newly added assessable property because of a filing error in the assessor's office. The Court stated:

> The mistake in the case at bar was not limited to merely recording a number incorrectly on the assessment rolls or performing a mathematical error in arriving at the final assessment figure. Rather, the figure recorded on the assessment rolls was accurate in the sense that it was the number intended by the assessor, albeit that the assessor may well have erred in the determination of what that number should be by failing to consider all relevant facts. In short, we agree with the Tax Tribunal that § 53b allows for corrections of clerical errors of a typographical or transpositional nature, but does not permit a reappraisal or reevaluation through the use of new or existing data of any type. That is, § 53b simply does not include cases where the assessor fails to consider all relevant data, even if the root of the assessor's error may have been a ministerial mistake such as the misfiling of a document.
>
> * * *
>
> The facts not being in dispute with regard to how the mistake arose, it is simply a matter of statutory interpretation whether that mistake is correctable under the statute. We have concluded that it is not.

Here, the Tribunal noted the reasoning and decision in *International Place, supra* and applied this same reasoning to its interpretation of the events of this case (it also noted that the Court in *Wolverine Steel, supra,* indicated that relief under MCL 211.53a was intended to be narrow and specifically limited. *Id.* at 636). The Tribunal stated:

> . . . the mutuality of the fact and the mutuality of the mistaken belief must be so blatantly simple and obvious that, in review of events, both are clearly discernible on their face by a trier of fact.
>
> In the Tribunal's view, that level of obviousness – the mutual mistake being equal in simplicity as were the clerical errors defined in International Place – is met only by dual mutuality, as the only form of mutuality that lends itself equally to ready discernment and simplicity. That is, the fact is mutual as to the material data reviewed and contemplated, and the mistaken belief is mutual in all respects . . . The mutuality occurs at an intersection of the parties' respective specific focus on a singular fact or set of facts of material import, form which is drawn a common mistaken belief. By the same means, simplicity is distinguished by the

mutuality criteria, both parties being aware of and having contemplated the same fact, and arriving at the same mistaken belief, both he fact and the mistaken belief being the primary cause of the erroneous assessment/tax.

4. Available Remedies

We note that petitioner did have other remedies that could have been used in an attempt to recover an overpayment of personal property taxes. MCL 211.30 requires taxpayers who believe that they were incorrectly assessed to file petitions before the local board of review in March. MCL 211.30 allows taxpayers to raise any type of claimed error including factual, legal, valuation, uniformity, exemption, description and ownership. Assessments are made in January and February so taxpayers have an opportunity to discover a mistake before March and have the mistake resolved at the board of review hearing.

Relief is also available to a petitioner who is incorrectly assessed under MCL 211.154, which states in relevant portion:

> (1) If the state tax commission determines that property liable to taxation . . . has been incorrectly reported or omitted for any previous year, but not to exceed the current assessment year and 2 years immediately preceding the date of discovery and disclosure to the state tax commission of the incorrect reporting or omission, the state tax commission shall place the corrected assessment value for the appropriate years on the appropriate assessment roll. The commission shall issue an order certifying to the treasurer of the local tax collecting unit if the local tax collecting unit has possession of a tax roll for a year for which an assessment change is made or the county treasurer if the county has possession of a tax roll for a year for which an assessment change is made the amount of taxes due as computed by the correct annual rate of taxation for each year except the current year. Taxes computed under this section shall not be spread against the property for a period before the last change of ownership of the property.

The appropriate avenues of relief for petitioner's claims were under MCL 211.30 and MCL 211.154 and not MCL 211.53a.

When taken as a whole, the plain meaning of the statute, case law, statutory interpretation, and the availability of another remedy indicate that the Tribunal was correct in its determination that this situation did not present a "mutual mistake of fact" and was not properly brought under MCL 211.53a. There were two separate, but related events in this case. The first was a unilateral mistake made by petitioner in its preparation of its personal property statement. The second event was respondent's reliance on petitioner's assertions in making its assessment. There was no "mutual mistake" because each party had different information on which to base their ultimate conclusions.

B. Sua Sponte Dismissal of Remaining Claims

Following its determination that relief was not available to petitioner pursuant to MCL 211.53a, the Tribunal reviewed petitioner's six additional claims and discovered that all seven claims involve erroneous reporting by petitioner and all seven are based on the same assertion

that the mutual mistakes were in the filing and acceptance of the erroneous personal property statements. The Tribunal sua sponte determined that this series of events does not constitute mutual mistake for the purposes of MCL 211.53a in any of the remaining six claims and dismissed those claims for lack of jurisdiction.

Petitioner asserts that the Tribunal erred in ruling sua sponte. However, our Supreme Court, in *Fox v University of Michigan Board of Regents*, 375 Mich 238, 242; 134 NW2d 146 (1965), stated that a court (here the Tribunal):

> At all times is required to question sua sponte its own jurisdiction (whether over a person, the subject matter of an action, or the limits on the relief it may afford).

Here, the Tribunal properly questioned its ability to provide relief on the additional counts and its decision to dismiss those counts sua sponte was not in error.

Petitioner also argues that this sua sponte dismissal denied petitioner the opportunity to be heard on this matter. However, although petitioner asserts that it was entitled to an oral argument, the Tax Tribunal Rules do not require that oral arguments be provided on motions. *Federal Mogul Corp v Department of Treasury*, 161 Mich App 346, 356-357; 411 NW2d 169 (1987). Respondent correctly notes that petitioner was given the opportunity to express its position in its brief in opposition to partial summary disposition.

In short, the tribunal correctly determined that there was no mutual mistake of fact with regard to the special tools exemption claim. For the other claims to result in a different resolution, the alleged "mutual mistake of fact" would need to have occurred in a different manner. Here, the six other claims all resulted from the unilateral mistakes of petitioner. Additional facts are unnecessary for the resolution of these issues and hearings on each additional count would be a waste of the Tribunal's resources. Therefore, the Tribunal's decision to dismiss these claims sua sponte was correct.

C. Cross Appeal

Respondent argues on cross appeal that the Tax Tribunal erred when it failed to grant summary disposition under MCR 2.116(C)(10) based on respondent's assertion that petitioner's property did not qualified for an exemption as "special tools." Our decision that summary disposition was properly granted under MCR 2.116(C)(4) where there was an absence of a mutual mistake of fact, obviates review of this issue.

Affirmed.

/s/ William B. Murphy
/s/ Donald S. Owens
/s/ Bill Schuette

# EXHIBIT

# D

# STATE OF MICHIGAN

# COURT OF APPEALS

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STEPHEN M. ATKINSON, on behalf of himself and all others similarly situated,

Petitioner-Appellant,

and

CITY OF GROSSE POINTE PARK and GROSSE POINTE BOARD OF EDUCATION

Intervening Petitioners,

v

CITY OF DETROIT,

Respondent-Appellee.

UNPUBLISHED
June 25, 1999

No. 199537
Michigan Tax Tribunal
LC No. 174129

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STEPHEN M. ATKINSON, on behalf of himself and all others similarly situated,

Petitioner-Appellee,

and

CITY OF GROSSE POINTE PARK and GROSSE POINTE BOARD OF EDUCATION,

Intervening Petitioners-Appellants,

v

CITY OF DETROIT,

No. 199803
Michigan Tax Tribunal
LC No. 174129

Respondent-Appellee.

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Before: MacKenzie, P.J., and Gribbs and Wilder, JJ.

PER CURIAM.

In Docket No. 199537, petitioner Stephen M. Atkinson, on behalf of himself and others similarly situated (hereafter collectively referred to as "petitioners") appeals as of right from the order of the Michigan Tax Tribunal dismissing his claim for a refund of taxes erroneously assessed and collected by respondent, City of Detroit (hereafter referred to as "Detroit"). In Docket No. 199803, intervening petitioners, the City of Grosse Pointe Park and the Grosse Pointe Board of Education (hereafter referred to as "Grosse Pointe"), appeal by delayed leave granted from the same order. We affirm.

In the absence of fraud, review of a decision by the Tax Tribunal is limited to determining whether the tribunal erred in applying the law or adopted a wrong principle; its factual findings are conclusive if supported by competent, material, and substantial evidence on the whole record. Const 1963, art 6, §28. *Michigan Bell Telephone Co v Dep't of Treasury*, 445 Mich 470, 476; 518 NW2d 808 (1994).

Petitioners and Grosse Pointe both contend that this Court, in its previous decision in this matter,[1] determined as a matter of law that petitioners were entitled to a tax refund from Detroit, and that this Court remanded the matter to the Tax Tribunal solely for the purpose of determining the appropriate amount of the refund that was due petitioners. Accordingly, they assert that the Tax Tribunal violated the law of the case doctrine when, on remand, the tribunal revisited the legal issues in the case and determined that petitioners were not entitled to a refund. We disagree.

The law of the case doctrine provides that, if an appellate court has passed on a legal question and remanded the case for further proceedings, the legal questions thus determined by the appellate court will not be decided differently on a subsequent appeal in the same case where the facts remain materially the same. *People v Fisher*, 449 Mich 441, 444-445; 537 NW2d 577 (1995); *Clemens v Lesnek (After Remand)*, 219 Mich App 245, 250; 556 NW2d 183 (1996).

The Michigan Tax Tribunal has "exclusive and original jurisdiction" of a "proceeding for refund or redetermination of a tax under the property tax laws." MCL 205.731(b); MSA 7.650(31). One apparent legislative purpose of vesting the tax tribunal with such broad authority over property tax assessment questions is to assure that tax contests are resolved in the first instance by an expert body. *State Treasurer v Eaton*, 92 Mich App 327, 333; 284 NW2d 801 (1979). See also *Kostyu v Dep't of Treasury*, 170 Mich App 123, 128; 427 NW2d 566 (1988). A proceeding before the tribunal is considered original, independent, and de novo. MCL 205.735; MSA 7.650(35); *Tradewinds E Associates v Hampton Charter Twp*, 159 Mich App 77, 82; 406 NW2d 845 (1987).

The dispositive issue in the prior appeal of this matter was whether the circuit court or Tax Tribunal had jurisdiction over the case. The circuit court refused to consider the question of alleged

overpayment of taxes to Detroit, properly recognizing that the Tax Tribunal had exclusive jurisdiction over that issue. On appeal, this Court agreed and remanded the matter to the Tax Tribunal, an "expert body," for a determination of the refund issue. Indeed, a close review of this Court's decision reveals that it did not actually decide, as a matter of law, that petitioners were legally entitled to a refund; rather, it reserved resolution of the substantive issue for the Tax Tribunal. Thus, this Court's prior decision did not establish any law of the case with respect to the issue of petitioner's entitlement to a refund in the first instance.

Grosse Pointe also argues that the Tax Tribunal erred in disregarding an earlier decision declaring Detroit liable to petitioners, but requesting additional proofs of damages. We conclude, however, that the Tax Tribunal had the power to entertain a reconsideration of that prior decision. See *Bean v State Land Office Board*, 335 Mich 165, 175; 55 NW2d 779 (1952); *Chesnow v Nadell*, 330 Mich 487, 490; 47 NW2d 666 (1951).

Next, petitioners and Grosse Pointe both contend that the Tax Tribunal erred in its determination that petitioners were not entitled to a refund from respondent. We disagree, although for reasons somewhat different than that of the Tax Tribunal.

Before enactment of the tax tribunal act, MCL 205.701 *et seq.*; MSA 7.650(1) *et seq.*, a taxpayer dissatisfied with an assessment could not sue for a refund unless the tax was paid "under protest." See e.g., *Carpenter v Ann Arbor*, 35 Mich App 608, 610-611; 192 NW2d 523 (1971). Although the tax tribunal act abolished the "payment under protest" requirement, MCL 205.774; MSA 7.650(74), its enactment did not affect the provisions of the general property tax act, MCL 211.1 *et seq.*, MSA 7.1 *et seq.*, governing property tax refunds. An aggrieved taxpayer must still satisfy the requirements of MCL 211.53a; MSA 7.97(1) and MCL 211.53b; MSA 7.97(2) in order to be eligible for a refund.

MCL 211.53a; MSA 7.97(1) provides:

> Any taxpayer who is assessed and pays taxes in excess of the correct and lawful amount due *because of a clerical error or mutual mistake of fact made by the assessing officer and the taxpayer* may recover the excess so paid . . . [Emphasis supplied.]

MCL 211.53b; MSA 7.97(2) explains the refund process where there has been a clerical error or a mutual mistake of fact relative to the correct assessment figures, the rate of taxation, or the mathematical computation relating to the assessing of taxes. Simply stated, the statute refers to errors "of a typographical, transpositional, or mathematical nature." *International Place Apartments-IV v Ypsilanti Twp*, 216 Mich App 104, 109; 548 NW2d 668 (1996). An error in the determination of a boundary line, such is at issue in this case, is not "of a typographical, transpositional, or mathematical nature." Thus, the Tax Tribunal did not err by finding the absence of a clerical error entitling petitioners to a refund.

We disagree, however, with the Tax Tribunal's conclusion that petitioners did not establish payment based on a "mutual mistake of fact." Under principles of contract law, a "mutual mistake" requires a belief by one or both of the parties not in accord with the facts, and the erroneous belief must relate to a basic assumption of the parties upon which the contract is made and which materially affects the agreed performances of the parties. *Shell Oil Co v Estate of Kent*, 161 Mich App 409, 421-422; 411 NW2d 770 (1987).

Here, all of the parties erroneously believed that petitioners' properties were situated within the boundaries of Detroit, rather than Grosse Pointe Park. The location of the boundary line was a "basic assumption" that "materially affect[ed]" the relationship between the parties. Accordingly, we are satisfied that a mutual mistake of fact existed, and that the Tax Tribunal erred by basing its holding that petitioners were not entitled to a tax refund on a finding that there was no mutual mistake between the parties. Nonetheless, we believe that this error was harmless.

MCL 211.1; MSA 7.1 provides that "all property, real and personal, within the jurisdiction of this state, not expressly exempted, shall be subject to taxation." In addition, MCL 211.99; MSA 7.153 provides:

> *No tax assessed upon any property . . . shall be held invalid by any court of this state on account of any irregularity* in any assessment, . . . or on account of any other irregularity, informality, or omission, or want of any matter of form or substance in any proceeding *that does not prejudice the property rights of the person whose property is taxed* . . . . [Emphasis supplied.]

Thus, a harmless-error-type analysis applies to nonprejudicial irregularities in form or substance. *Crawford v Michigan*, 208 Mich App 117, 124; 527 NW2d 30 (1994). See also *Smelsey v Safety Investment Co*, 310 Mich 686, 690; 17 NW2d 868 (1945). In addition, the Tax Tribunal has broad powers to remedy any alleged irregularity in the assessment and valuation process. MCL 205.732; MSA 7.650(32); *Richland Twp v State Tax Comm*, 210 Mich App 328, 336; 533 NW2d 369 (1995). Accord *Caplan v Jerome,* 314 Mich 198, 203; 22 NW2d 270 (1946).

We find that the assessment and collection of taxes on petitioners' properties by Detroit, rather than by Grosse Pointe, constituted an unprejudicial irregularity about which petitioners are in no position to complain. Regardless of the boundary line determination, petitioners would have been subject to taxation by one of the two taxing authorities. Detroit and Grosse Pointe had previously stipulated that the petitioners would not have paid less taxes to Grosse Pointe before 1983, than they actually paid to Detroit. Since petitioners did not demonstrate that Detroit collected more taxes than would have been collected by Grosse Pointe, no prejudice to petitioners can be established.

We recognize that both petitioners and Grosse Pointe argue that the 1986 stipulation between Detroit and Grosse Pointe is not controlling for purposes of our analysis of petitioners right to any refund from Detroit, however, we disagree. The Tax Tribunal found that "the clear implication of the

stipulation is that Detroit provided services to petitioners because of the express distinction it makes as to which party provided services and when that party provided such services." This finding is supported by competent, material, and substantial evidence on the whole record. *Michigan Bell Telephone Co, supra* at 476.

Petitioners also argue that Detroit should not be permitted to retain the taxes it collected "without legal authority," and that they (petitioners) should therefore receive a refund of *all* the taxes erroneously paid to Detroit. However, petitioners offer no authority for this proposition that would absolve them of any obligation to pay taxes and we will not search for it. *Winiemko v Valenit,* 203 Mich App 411, 419; 513 NW2d 181 (1994).

In light of the foregoing conclusions, we need not consider the parties' remaining arguments.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Barbara B. MacKenzie
/s/ Roman S. Gribbs

[1] *Atkinson v Detroit*, unpublished opinion per curiam of the Court of Appeals, issued March 18, 1992 (Docket No. 124635).

# EXHIBIT

# E

# STATE OF MICHIGAN

# COURT OF APPEALS

DELTA AIRLINES, INC.

Petitioner-Appellant,

V

CITY OF ROMULUS,

Respondent-Appellee.

UNPUBLISHED
August 2, 2002

No. 225881
Tax Tribunal
LC No. 00-263925

Before: Neff, P.J., and Wilder and Cooper, JJ.

PER CURIAM.

Petitioner Delta Airlines appeals as of right from the Tax Tribunal's order denying entry of petitioner's and respondent's stipulated consent judgment dismissing its petition for a refund of taxes. We reverse and remand for entry of the parties' stipulated consent judgment.

## I. Facts and Proceedings

The underlying facts in this case are undisputed. In 1982, Delta and Wayne County entered into a 20-year lease agreement providing for Delta's use of an airplane hangar owned by Wayne County. The agreement required Delta to pay all applicable taxes during the lease period. Beginning on November 15, 1994, Delta discontinued its use of the hanger and instead, the hanger was leased to and used by Spirit Airlines. The lease to Spirit required Spirit to pay all applicable taxes during its leasehold tenure.. Despite the change in lessee, in 1995 and 1996 respondent assessed property taxes on the hangar against Delta pursuant to MCL 211.181(1).[1] Delta paid the assessed taxes on September 27, 1995, February 9, 1996, September 25, 1996, and February 11, 1997, respectively, but later realized it had discontinued its leasehold on and use of the hanger in 1994. Accordingly, Delta brought this action pursuant to MCL 211.53a, seeking a

[1] MCL 211.181(1) provides:

> Except as provided in this section, if real property exempt for any reason from ad valorem property taxation is leased, loaned, or otherwise made available to and used by a . . . corporation in connection with a business conducted for profit, the lessee or user of the real property is subject to taxation in the same amount and to the same extent as though the lessee or use owned the real property.

refund of the property taxes paid in 1995 and 1996.[2] The chief clerk of the Tax Tribunal notified petitioner by letter that petitioner's refund was denied because "the Michigan Tax Tribunal has determined that the Tribunal does not have jurisdiction over this matter."

In July 1999, respondent and petitioner reached agreement that petitioner had mistakenly been assessed taxes on the hanger in 1995 and 1996, and that the taxes were mistakenly paid. Petitioner and respondent memorialized this agreement in a stipulated consent judgment filed with the Tax Tribunal on July 21, 1999, which provided, in part:

> 6. For a number of years prior to December 31, 1994, Petitioner used the subject property and, based upon the fact that Petitioner is a for profit corporation that was using real property exempt from ad valorum property taxation, Petitioner was assessed taxes pursuant to MCLA 211.181.
>
> 7. As a result of the mistaken belief that Petitioner was still using the subject property on December 31, 1994 and December 31, 1995, Petitioner was assessed and paid taxes on the subject property, when, as a matter of fact, Petitioner ceased using the property in November of 1994.
>
> 8. The subject property was assessed as of the relevant tax dates as a result of a mutual mistake of fact and, therefore, the assessed, state equalized, and taxable values for 1995 and 1996 should be 0.
>
> * * *
>
> It is hereby requested that the Michigan Tax Tribunal enter a consent judgment consistent with this stipulation.

The tribunal denied the parties' stipulated consent judgment on the basis that the case had been "dismissed on February 9, 1999, [because] the Tribunal determined there was no clerical error or mutual finding of fact and, as such, lacked jurisdiction over the assessments for tax year(s) 1995 and 1996 pursuant to MCL[] 211.53a." Petitioner filed a motion for reconsideration, arguing that neither party had received an order indicating that the case had been dismissed, and that the Tribunal clerk confirmed that no such order had been issued. The rehearing motion also argued that, while the chief clerk's letter of November 19, 1998 had been treated as an order for dismissal, the chief clerk lacked authority to enter final orders.

On March 1, 2000, the tribunal acknowledged that the case had not been properly dismissed for lack of jurisdiction because the chief clerk did not have the authority to order such a dismissal. However, the tribunal denied the motion, finding that "given [p]etitioner's

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[2] On the same day, Delta also filed an action against Spirit Airlines, alleging that Spirit Airlines leased and used the hanger during the 1995 and 1996 tax years, and that it was entitled to reimbursement from Spirit for the amounts paid. The trial court granted summary disposition in favor of Delta and Spirit appealed as of right. Spirit's appeal is also decided today by this panel. *Delta Airlines, Inc. v Spirit Airlines,* unpublished opinion per curiam of the Court of Appeals, issued __/__/ 2002 (Docket No. 224410).

knowledge relative to its leasing of the property, said payments [] do not constitute a mutual mistake of fact". The tribunal further found that there had been no clerical error under MCL 211.53a, that petitioner (1) voluntarily paid the property taxes, (2) failed to bring the action "by June 30 of the tax years involved as required by MCL 205.735," and (3) had not demonstrated palpable error that misled the Tribunal in its August 5, 1999 order. As such the tribunal found it lacked "jurisdiction over the assessments at issue," and the case was dismissed.

On appeal, petitioner argues that because the taxes were paid on the basis of a mutual mistake, the tribunal erred when it dismissed the case for lack of jurisdiction, and requests "that this Court enter an Order instructing the Tribunal to accept jurisdiction in this case and enter the consent judgment to which the parties have stipulated." Respondent has not filed a brief on appeal; however, it has indicated that it "concurs in the relief sought by petitioner."

II. Standard of Review

In the absence of fraud, review of a decision by the Tax Tribunal is limited to determining whether the tribunal erred in applying the law or adopted a wrong principle; its factual findings are conclusive, and its decisions will not be reversed, if they are supported by competent, material, and substantial evidence on the whole record. *Michigan Bell v Treasury Dep't*, 445 Mich 470, 476; 518 NW2d 808 (1994); *Kadzban v Grandville,* 442 Mich 495, 502-503; 502 NW2d 299 (1993). *Blaser, supra.*

The parties sought to enter a stipulated consent judgment under MCL 211.53a, which provides:

> Any taxpayer who is assessed and pays taxes in excess of the correct and lawful amount due because of a clerical error or mutual mistake of fact made by the assessing officer and the taxpayer may recover the excess so paid, without interest, if suit is commenced within 3 years from the date of payment, notwithstanding that the payment was not made under protest.

Here the tribunal found that there was no clerical error or mutual mistake of fact to bring the parties' action under MCL 211.53a, and that the parties' had exceeded the shorter statutory time period to bring action under MCL 205.735, which applies to assessment disputes.

This is clearly not an assessment dispute—respondent agrees that petitioner did not owe any tax on the subject property. Because the parties agree that the tax was mistakenly assessed and mistakenly paid, and because there is no evidence to the contrary, the tribunal's finding that there was no mutual mistake of fact is not supported by competent, material and substantial evidence on the whole record. *Kadzban, supra.* Further, because MCL 211.53a specifically provides for reimbursement of taxes paid by mutual mistake even when not paid under protest, it was an error of law for the tribunal to rely exclusively on the common law concept that taxes "voluntarily" paid cannot be recovered. *Bateson v Detroit*, 143 Mich 582; 106 NW 1104 (1906).

Reversed.

/s/ Janet T. Neff
/s/ Kurtis T. Wilder
/s/ Jessica R. Cooper

# EXHIBIT

# F

# STATE OF MICHIGAN

# COURT OF APPEALS

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REDFORD OPPORTUNITY HOUSE,

Petitioner-Appellant,

v

TOWNSHIP OF REDFORD,

Respondent-Appellee.

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UNPUBLISHED
May 18, 2004

No. 235051
Tax Tribunal
LC No. 00-279118

Before: Talbot, P.J., and Neff and Donofrio, JJ.

PER CURIAM.

Petitioner Redford Opportunity House appeals as of right the Tax Tribunal's order dismissing its petition for recovery of excess property tax payments from respondent Redford Township. The Tax Tribunal determined that petitioner failed to allege either a clerical error or a mutual mistake of fact and, therefore, failed to invoke its jurisdiction under MCL 211.53a. We affirm.

I

In 2000, petitioner filed a petition for review in the Tax Tribunal, seeking recovery of property taxes paid to respondent in the years 1997, 1998, and 1999. Petitioner contended that it was entitled to refunds under MCL 211.53a, which allows taxpayers a three-year period to recover excess payments not made in protest due to clerical errors or a mutual mistake of fact between the taxpayer and the assessing officer. Petitioner alleges that when it paid the property taxes for those three years, it failed to realize that it was exempt from property taxes under the charitable institution exemption, MCL 211.7o. The Tax Tribunal dismissed the petition for want of jurisdiction on the basis that petitioner had alleged only an error of law, not of fact, and also, that the alleged mistake was not a mutual one between petitioner and respondent.

II

MCL 211.53a provides taxpayers with a three-year period in which they may recover excessive tax payments attributable to a clerical error or mutual mistake of fact:

> Any taxpayer who is assessed and pays taxes in excess of the correct and lawful amount due because of a clerical error or mutual mistake of fact made by the assessing officer and the taxpayer may recover the excess so paid, without interest, if suit is commenced within 3 years from the date of payment, notwithstanding that the payment was not made under protest.

Petitioner contends that the Tax Tribunal erroneously determined that petitioner failed to identify a mutual mistake of fact. We disagree.

Petitioner's mistaken belief regarding its tax-exempt status is clearly a mistake of law rather than fact. In *Noll Equipment v Detroit*, 49 Mich App 37, 41-43; 211 NW2d 257 (1973), this Court held that a taxpayer's error in failing to recognize its entitlement to federal immunity from a local property tax was an error of law, not fact, and, therefore, the taxpayer was not entitled to relief under MCL 211.53a. This reasoning equally applies here to petitioner's failure to recognize its tax-exempt status.

To qualify for tax-exempt status, petitioner would have to establish, by a preponderance of the evidence, that it was a charitable institution within the meaning of MCL 211.7o. *ProMed Healthcare v Kalamazoo*, 249 Mich App 490, 491-492; 644 NW2d 47 (2002). Petitioner has identified no mistake of fact relating to this inquiry. Petitioner's failure to "realize" that it was eligible for an exemption is not a mistake of fact, but a failure to comprehend and appreciate the legal significance of relevant facts. Moreover, petitioner's statement in a letter to the Tax Tribunal, referencing research of applicable statutes and case law, is essentially a concession that the mistake is one involving law, not fact. The Tax Tribunal correctly applied MCL 211.53a when it determined that this was a mistake of law, not fact.

Because we conclude that the Tax Tribunal correctly determined that petitioner failed to identify a mistake of fact, and the Tax Tribunal's decision is affirmed on this basis, we need not also consider whether the alleged mistake was mutual between petitioner and respondent.

We note, however, that on October 22, 2001, this Court issued an order holding this appeal in abeyance pending this Court's decision in *General Products Corp v Leoni Township* (Docket No. 233432). On May 8, 2003, this Court issued its decision in *General Products* and the abeyance order for this appeal was thereafter vacated. In *General Products*, in addressing a similar claim concerning the applicability of MCL 211.53a, this Court affirmed the Tax Tribunal's decision on the ground that there was no mutual mistake, but declined to consider whether the alleged mistake was one of fact or law. *General Products Corp v Leoni Township*, unpublished opinion per curiam of the Court of Appeals, issued May 8, 2003 (Docket No. 233432), slip op at 3, n 2. Because the circumstances here warrant the converse approach, we need not consider whether or to what extent the decision and rationale in *General Products* applies.

We also reject petitioner's argument that the Tax Tribunal erroneously failed to adopt a more liberal interpretation of MCL 211.53a, because it is a remedial statute that should be construed favorably to the taxpayer. This argument ignores the basic principle that nothing may be read into a clear statute that is not within the manifest intention of the Legislature as derived

from the language of the statute itself. *Roberts v Mecosta Co Gen Hosp*, 466 Mich 57, 63; 642 NW2d 663 (2002). The language of MCL 211.53a is clear and unambiguous. It affords relief only to a taxpayer whose overpayment is attributable to either a clerical error or a mutual mistake of fact. Here, petitioner's failure to recognize its tax-exempt status before 2000 was neither.

Affirmed.

/s/ Michael J. Talbot
/s/ Janet T. Neff
/s/ Pat M. Donofrio

# EXHIBIT G

# STATE OF MICHIGAN

# COURT OF APPEALS

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RAVENNA CASTINGS CENTER,

Petitioner-Appellant,

v

TOWNSHIP OF RAVENNA,

Respondent-Appellee.

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UNPUBLISHED
May 6, 2004

No. 242286
Michigan Tax Tribunal
LC No. 00-288443

Before: O'Connell, P.J., and Jansen and Murray, JJ.

PER CURIAM.

Petitioner appeals as of right the order of the Michigan Tax Tribunal (MTT) dismissing its petition. We affirm.

Petitioner contends that the MTT erred in dismissing the petition for failing to properly invoke the tribunal's subject matter jurisdiction. It argues that because the petition alleged that its 2000 personal property tax assessment contained clerical errors, the MTT had jurisdiction pursuant to MCL 211.53a. We review decisions of the MTT to determine whether the MTT erred as a matter of law or adopted an erroneous legal principle. *Michigan Bell Tel Co v Treasury Dep't,* 445 Mich 470, 476; 518 NW2d 808 (1994). The MTT's factual findings are accepted as final if those findings are "supported by competent, material, and substantial evidence on the whole record." *Id.* Additionally, we review the decision to grant or deny summary disposition de novo. *Sun Communities v Leroy Twp,* 241 Mich App 665, 668; 617 NW2d 42 (2000); *Walker v Johnson & Johnson Vision Products, Inc,* 217 Mich App 705, 708; 552 NW2d 679 (1996). "When reviewing a motion for summary disposition under MCR 2.116(C)(4), this Court must determine whether the pleadings demonstrate that the respondent was entitled to judgment as a matter of law, or whether the affidavits and other proofs show that there was no genuine issue of material fact." *Id.*

Petitioner argues that the MTT erred in finding that it lacked jurisdiction over petitioner's petition under MCL 205.735. We disagree. The MTT has exclusive and original jurisdiction to review final decisions relating to assessments or valuations under the property tax laws. MCL 205.731(a). Under MCL 205.735(1), before the MTT acquires jurisdiction over "an assessment dispute as to the valuation of property" under MCL 205.735(2), a party must first protest the assessment before the local board of review. *Manor House Apartments v City of Warren,* 204

Mich App 603, 604-606; 516 NW2d 530 (1994). MCL 205.735(2) sets forth the time limits as follows:

> The *jurisdiction* of the tribunal in an assessment dispute is invoked by a party in interest, as petitioner, filing a written petition on or before June 30 of the tax year involved. Except in the residential property and small claims division, a written petition is considered filed by June 30 of the tax year involved if it is sent by certified mail on or before June 30 of that tax year. . . . All petitions required to be filed or served by a day during which the offices of the tribunal are not open for business shall be filed by the next business day. In all other matters, the *jurisdiction of the tribunal* is invoked by a party in interest, as petitioner, filing a written petition within 30 days after the final decision, ruling, determination, or order that the petitioner seeks to review. . . [emphasis added].

"The time requirements contained in MCL 205.735(2) are jurisdictional in nature." *Electronic Data Systems Corp v Flint Twp*, 253 Mich App 538, 543; 656 NW2d 215 (2002). If a petitioner fails to file its petition within the time limit provided and cites no other statutes granting a longer period, the MTT is without jurisdiction to consider the petition and must dismiss it. *Id.*, citing *Szymanski v Westland*, 420 Mich 301, 305; 362 NW2d 224 (1984). Once a court determines that it has no jurisdiction, it "should not proceed further except to dismiss the action." *Id.* at 544-545, citing *Fox v Bd of Regents of the Univ of Michigan*, 375 Mich 238, 243; 134 NW2d 146 (1965). A party's failure to correct assessments and evaluations in the manner and time provided by statute precludes later attack upon the assessment. *Auditor General v Smith,* 351 Mich 162, 168; 88 NW2d 429 (1958).

The instant case involves a dispute concerning petitioner's tax assessment for the year 2000. Under MCL 205.735(2), petitions concerning assessment disputes must be filed by June 30 of the tax year involved. But petitioner alleges that its assessment was changed at the December 2001 meeting of the board of review and challenges the resulting tax bill. Because petitioner challenges the board's action in making this change, the fourth sentence of MCL 205.735(2) applies, giving petitioner thirty days from the time of the board's determination to seek review before the MTT. However, petitioner failed to file its petition with the MTT until January 11, 2002, thirty-one days from the board's determination. Therefore, the petition was not timely filed and the MTT did not have jurisdiction to hear the case. *Electronic Data Systems Corp*, *supra* at 543.

Petitioner argues that the MTT erred in finding that its petition was untimely under MCL 205.735. Rather than stating that the petition was untimely based on the assessment made at the December 2000 board of review, the order dismissing the petition held that the "letter of appeal was filed more than 30 days after the issuance of notice of the action taken by respondent's 2001 December Board of Review." Petitioner contends that it never received notice of this decision and that the December 14, 2001 letter from respondent's assessor to the state tax commission indicates that the matter was still pending on that date. However, even if petitioner's claim is correct, the MTT properly dismissed the petition for lack of subject matter jurisdiction because petitioner failed to file a petition within thirty days of the December 2001 decision.

Petitioner asserts that the MTT had jurisdiction because the petition was timely filed under MCL 211.53a. That statute provides as follows:

> Any taxpayer who is assessed and pays taxes in excess of the correct and lawful amount due because of a clerical error or mutual mistake of fact made by the assessing officer and the taxpayer may recover the excess so paid, without interest, if suit is commenced within 3 years from the date of payment, notwithstanding that the payment was not made under protest.

In *Wolverine Steel Co v Detroit,* 45 Mich App 671, 674; 207 NW2d 194 (1973), this Court interpreted the term "mutual mistake" as used in MCL 211.53a, and in doing so, examined the relationship between MCL 211.53a and MCL 211.53b, which are in pari materia. *Id.* This Court noted that MCL 211.53b listed errors in assessment figures, application of the proper tax rate, and mathematics as the types of errors or mistakes with which it was intended to deal, and concluded that those were the types of errors or mistakes contemplated by MCL 211.53a. *Id.* at 674-675.

This Court further interpreted MCL 211.53b in *Int'l Place Apartments-IV v Ypsilanti Twp*, 216 Mich App 104, 109; 548 NW2d 668 (1996), in which we stated as follows:

> The mistake in the case at bar was not limited to merely recording a number incorrectly on the assessment rolls or performing a mathematical error in arriving at the final assessment figure. Rather, the figure recorded on the assessment rolls was accurate in the sense that it was the number intended by the assessor, albeit that the assessor may well have erred in the determination of what that number should be by failing to consider all relevant facts.

Although MCL 211.53b allows for correction of clerical errors of a "typographical or transpositional nature," the statute does not permit reappraisal or reevaluation in cases in which the assessor failed to consider all relevant data, "even if the root of the assessor's error may have been a ministerial mistake such as the misfiling of a document." *Id.* Based on *Wolverine Steel, supra* at 674, this interpretation also applies to MCL 211.53a.

In the instant case, petitioner's initial petition alleged that due to confusion over the status of its tax abatement, clerical error, and mistake, its 2000 personal property assessment was in error. Petitioner asserted that the error occurred when the township assessor changed petitioner's assessment so that some of its equipment was double assessed. Petitioner first requested relief pursuant to MCL 211.53a, alleging that "due to a clerical error, the December 2000 assessment was added to the prior assessments resulting in an erroneous tax bill being generated." But petitioner does not allege that this double assessment occurred due to an error of a typographical or transpositional nature. As in *Int'l Place Apartments*, *supra* at 109, the figure recorded on the assessment rolls was accurate in the sense that it was the number intended by the assessor. Although the assessor may have relied on mistaken information or failed to consider all of the relevant facts, MCL 211.53a does not permit reappraisal or reevaluation of such errors. *Id.*; *Wolverine Steel, supra.* Therefore, the MTT properly held that MCL 211.53a did not apply.

Therefore, respondent was entitled to judgment as a matter of law and summary disposition pursuant to MCR 2.116(C)(4) was appropriate.[1]

Petitioner's final argument is that the MTT erred in denying its motion for reconsideration. We review a trial court's denial of a motion for reconsideration for an abuse of discretion. *Herald Co, Inc v Tax Tribunal*, 258 Mich App 78, 82; 669 NW2d 862 (2003); *In re Beglinger Trust,* 221 Mich App 273, 279; 561 NW2d 130 (1997).

Under MCR 2.119(F)(3), the party moving for reconsideration "must show that the trial court made a palpable error and that a different disposition would result from correction of the error." *Herald Co, supra* at 82. Furthermore, a motion for reconsideration that merely presents the same issues already ruled on by the court generally will not be granted. *Id.* In *Herald Co*, this Court found that the MTT did not abuse its discretion in denying the respondents' motion for reconsideration because it "did not raise any error that misled the court or the parties, but rather questioned the trial court's reasoning and its decisions on issues of law already decided by the court." *Id.* at 83.

In the instant case, petitioner's motion for reconsideration stated that the first amended complaint alleged that an overpayment occurred due to a clerical error by the township assessor. Like the motion in *Herald Co*, petitioner's motion for reconsideration merely questions the MTT's reasoning in its earlier decision refusing to correct petitioner's assessment pursuant to MCL 211.53a. Thus, the tribunal did not abuse its discretion in denying the motion for reconsideration.

Nevertheless, petitioner asserts that the tribunal erred in stating that the there was "no mutuality given petitioner's preparation of the personal property statement at issue." It contends that this created a per se rule that any error arising out of a personal property statement cannot provide the basis for a mutual mistake of fact. In asserting that this constitutes error, petitioner cites the following description of a mutual mistake of fact from *Wolverine Steel, supra* at 674:

> We believe [section 211. 53a] alludes to questions of whether or not the taxpayer had listed all of its property, or listed property that it had already sold or not yet received, etc.

As petitioner argues, these examples constitute mistakes that would arise in the context of a personal property statement prepared by a taxpayer. To the extent that the MTT's decision states that such statements can never provide the source of a mutual mistake of fact, it is in error. But petitioner never asserted the existence of a mutual mistake of fact as a basis for invoking MCL 211.53a. Rather, its first amended petition and motion for reconsideration only allege the existence of a clerical error and a "mistake." As noted above, the error asserted does not

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[1] Petitioner has suggested that it should be entitled to produce evidence to the MTT to establish that a mutual mistake occurred. However, petitioner had that opportunity when respondent filed its motion for summary disposition, but petitioner did not file a response to that motion. Petitioner's own failure to submit a response cannot be a ground for reversal on appeal.

constitute the type of clerical error for which MCL 211.53a provides a remedy. The MTT correctly held that the purported error was not of a typographical or transpositional nature as required by *Int'l Place Apartments*, *supra* at 109. We find that petitioner has failed to show the existence of a palpable error and that a different disposition would result from correction of the error as required by MCR 2.119(F)(3). Therefore, the MTT did not abuse its discretion.

We have not ignored petitioner's argument that the MTT decision was inequitable. After all, it is undisputed that respondent has received a double payment of taxes from petitioner. However, the MTT's powers are limited to those granted by statute, *Federal-Mogul Corp v Dep't of Treasury,* 161 Mich App 346, 359; 411 NW2d 169 (1987), and because no statute authorizes the MTT to base it's decision on equity, it could not consider petitioner's pleas (had it filed a response to the motion) based on that theory. *Id.*; *Electronic Data Systems Corp, supra* at 547-548.[2]

Affirmed.

/s/ Kathleen Jansen
/s/ Christopher M. Murray

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[2] The dissent incorrectly asserts that the parties agree that a "mutual mistake" occurred, for respondent has surely made no such concession. Respondent instead concedes that a mistake was made, but argues that it was not a mutual mistake as defined under the statute. Finally, contrary to the dissent, we believe petitioner lost its opportunity to prove mutual mistake when it failed to file a response to respondent's motion to dismiss.

# STATE OF MICHIGAN

# COURT OF APPEALS

RAVENNA CASTINGS CENTER,

Petitioner-Appellant,

v

TOWNSHIP OF RAVENNA,

Respondent-Appellee.

UNPUBLISHED
May 6, 2004

No. 242286
Michigan Tax Tribunal
LC No. 00-288443

Before: O'Connell, P.J., and Jansen and Murray, JJ.

O'CONNELL, P.J. (dissenting).

I respectfully dissent. In my opinion, this petition was timely filed under MCL 211.53a and, therefore, the Michigan Tax Tribunal (MTT) has jurisdiction to hear this dispute. I would remand this matter to the MTT for a decision on the merits.

MCL 211.53a reads as follows:

> Any taxpayer who is assessed and pays taxes in excess of the correct and lawful amount due because of a clerical error or mutual mistake of fact made by the assessing officer and the taxpayer may recover the excess so paid, without interest, if suit is commenced within 3 years from the date of payment, notwithstanding that the payment was not made under protest.

A clear reading of the statute provides that if a mutual mistake has occurred then a taxpayer may recover the taxes paid "if suit is commenced within 3 years from the date of payment." *Id.* In the present case, the township admits that both it and the taxpayer made a rudimentary blunder with regard to petitioner's taxes. In fact, the township agreed to repay petitioner the excess taxes. Unfortunately, however, the township has spent the funds and now lacks the funds to accomplish this task.

In a case such as this, when both parties agree a mutual mistake has occurred, in my opinion, the mistake falls within the clear, plain language of the statute. The majority's hypertechnical definition of "mutual mistake" contorts the phrase's plain meaning, making it inapplicable to a factual situation where the Legislature certainly intended it to apply. I conclude that when both parties admit that a simple mistake has been made, the MTT has jurisdiction to hear the merits of a case brought within three years pursuant to the plain language in MCL

211.53a. At the very least, petitioner should have the right to develop the facts to establish that a mutual mistake has occurred.

I would remand this case to the MTT for further proceedings.

/s/ Peter D. O'Connell